

K1NVTEM1 CORRECTED

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

19 CR 696 (PAE)

5 ARI TEMAN,

6 Defendant.

JURY TRIAL

7 -----x

8 New York, N.Y.
9 January 23, 2020
9:05 a.m.

10 Before:

11 HON. PAUL A. ENGELMAYER,

12 District Judge

13
14 APPEARANCES

15 GEOFFREY S. BERMAN,

16 United States Attorney for the
Southern District of New York

17 KEDAR S. BHATIA

EDWARD A. IMPERATORE

18 Assistant United States Attorneys

19 JOSEPH A. DIRUZZO, III

JUSTIN GELFAND

20 Attorneys for Defendant

21 ALSO PRESENT: DANIEL ALESSANDRINO, NYPD

WILLIAM MAGLIOCCO, Paralegal, USAO

K1NVTEM1 CORRECTED

1 (Trial resumed; jury not present)

2 THE COURT: Good morning, everybody.

3 I have nothing of my own initiative to take up with
4 you this morning. I note that I received an email late
5 yesterday, shortly after the end of the court day, from
6 Mr. Bhatia stating that it was at least possible that the
7 government would rest today.

8 THE DEPUTY CLERK: Judge, one moment please.

9 (Pause)

10 THE COURT: We'll see. But, either way, I've
11 previously given the defense dispensation not to have to call
12 any witnesses today, and that stands.

13 All right. With that, just going around the horn,
14 government, do you have anything to raise this morning?

15 MR. BHATIA: Nothing, your Honor.

16 We noticed that defense filed -- made a filing
17 yesterday with the -- with their proposed advice of counsel
18 defense. I wanted to let the Court know that we're vetting it
19 and looking into it and we'll get something to the Court.

20 THE COURT: Great.

21 Scully gives you a pretty good roadmap. I would be
22 interested in seeing if there's any go-by from a colleague
23 since *Scully*, but it seems to me that *Scully* couldn't be more
24 useful guidance on the subject. But obviously I'm eager to see
25 what you come up with.

K1NVTEM1 CORRECTED

1 MR. BHATIA: Thank you.

2 THE COURT: Do you have the just updated exhibit list
3 for me?

4 MR. MAGLIOCCO: Yes. It's in the binder.

5 THE COURT: Where is it?

6 MR. MAGLIOCCO: It's in your binder.

7 THE COURT: Oh, I'm sorry, no, no. I prefer to just
8 have it by hand so that I can have it by my side as I work.

9 Thank you. Thank you very much, Mr. Magliocco.

10 All right. So, government, anything to raise from
11 you?

12 MR. BHATIA: Nothing, your Honor.

13 THE COURT: Defense?

14 MR. GELFAND: Two very short matters, your Honor.

15 THE COURT: Yes. Go ahead.

16 MR. GELFAND: The first, the parties are in agreement
17 on, I just wanted to advise the Court on that, and that is that
18 there were -- in discovery, within the past week or so, there
19 were -- and it was appropriately disclosed to us; we appreciate
20 it. There were allegations by two government witnesses, one
21 involving charges via credit card to Sublet Spy, which is
22 another business not the subject of this trial.

23 THE COURT: Another business run by Mr. Teman?

24 MR. GELFAND: Yes, your Honor.

25 THE COURT: I'm sorry, when you say "charges," just, I

K1NVTEM1 CORRECTED

1 don't know what you mean by -- allegations or --

2 MR. GELFAND: There were allegations that we would
3 dispute, but there were allegations that Sublet Spy
4 essentially, on a monthly basis, charged a certain witness's
5 credit card that the witness claimed shouldn't have been
6 charged.

7 THE COURT: Right.

8 MR. GELFAND: We would move to exclude that. The
9 government has no intention of getting into it, so it's beyond
10 dispute.

11 THE COURT: All right. In other words, both sides
12 agree that that's not a proper subject for examination?

13 MR. GELFAND: Yes, your Honor.

14 THE COURT: Government, is that correct?

15 MR. BHATIA: That's right. At this time we don't have
16 an intention of getting into it.

17 THE COURT: All right. Then in the event that events
18 change that, the door is opened by something that is elicited,
19 please seek a sidebar before anybody going there. But I'll
20 take that as off limits, unless somebody raises it with me.

21 MR. GELFAND: The second issue falls under the same
22 category, also not a dispute between the parties. And that's
23 that one of the government's anticipated witnesses, Joseph
24 Soleimani, via *Jencks*, for lack of a better way of putting it,
25 basically made -- he has a theory that Mr. Teman contacted

K1NVTEM1 CORRECTED

1 tenants of his on one occasion and had them send rent checks
2 somewhere else, not clear exactly where. We also would ask
3 that that theory or that testimony, that allegation, be
4 excluded from trial.

5 THE COURT: Have you taken that up with the
6 government?

7 MR. GELFAND: We have. And that falls under the same
8 category, your Honor. There's no dispute.

9 THE COURT: All right. Mr. Bhatia, is that correct?

10 MR. BHATIA: That's right, your Honor.

11 And also, subject, of course, to facts changing during
12 trial, and also the defense's representation that they don't
13 intend to get into that on cross, we wouldn't intend to get
14 into it in our --

15 THE COURT: All right. Well, then I will heed what
16 both of you are jointly saying, which is you both believe this
17 is either irrelevant or its relevance is outweighed by
18 countervailing 403 factors.

19 So as with the first subject, in the event that
20 anyone's mind changes because something has happened at trial,
21 raise it with me first; don't go there without affirmative
22 permission from the Court.

23 MR. GELFAND: Yes, your Honor.

24 The third thing is really just for the record.

25 Obviously, this day and age, *Jencks* material is

K1NVTEM1 CORRECTED

1 disclosed in advance of trial, has been disclosed in advance of
2 trial. We appreciate that. But we would just ask the Court to
3 permit us to make a continuing request throughout trial at the
4 close of every government witness for full disclosure of *Jencks*
5 material.

6 THE COURT: Right. I took as a given that if the
7 government meets with a witness after the court day and
8 generates additional 3500 material, that is subject to the
9 ongoing obligation. I doubt the government disputes that.

10 MR. GELFAND: Yes. We just wanted to be on the record
11 requesting *Jencks*.

12 THE COURT: Mr. Bhatia, you're in agreement, correct?

13 MR. BHATIA: That's right, your Honor.

14 We're producing on a rolling basis.

15 THE COURT: Very good.

16 MR. GELFAND: Thank you, your Honor.

17 THE COURT: Mr. Smallman advised me that the defense
18 might want to bring to my attention exhibits that it may or may
19 not use today, something -- I couldn't quite follow what the
20 specific request was.

21 MR. GELFAND: It was a pure housekeeping matter, your
22 Honor.

23 In the ordinary course of just trial preparation, we
24 have premarked certain exhibits that we obviously might or
25 might not introduce at trial. All relative have been disclosed

K1NVTEM1 CORRECTED

1 to the government in discovery, some with exhibit stickers on
2 it, some without. But there's going to be no surprises there.

3 What I was wanting to know is whether the Court
4 basically wanted an advanced copy of those or whether we should
5 just take it up as the witnesses testify.

6 THE COURT: If you're not going to offer it, I don't
7 need to see it.

8 MR. GELFAND: Okay.

9 THE COURT: If you are going to offer it, I'd be happy
10 to have it with the exhibit number as marked, if only to just
11 keep my papers in order. And if it's not clear, I leave it to
12 your good judgment. But, either way, at the time that you
13 present the exhibit to the witness, I'll need a copy. I'd like
14 one for my law clerk as well.

15 Your call. I'm happy to have it if you're going to be
16 offering it.

17 MR. GELFAND: Okay. I just wanted to raise that.

18 We'll get it organized ourselves with that guidance
19 and provide it accordingly.

20 THE COURT: Very good.

21 One moment.

22 All right. I don't have anything further.

23 Anyone? Nothing to raise?

24 MR. BHATIA: No, your Honor.

25 MR. GELFAND: No, your Honor.

K1NVTEM1 CORRECTED

1 THE COURT: Defense, is it still your expectation --
2 not holding you to it -- that Ms. Finocchiaro will be on cross
3 for approximately 20 more minutes or so?

4 MR. GELFAND: It is, your Honor. And I've had that
5 opportunity to get it even more organized, so hopefully that
6 saves some time.

7 THE COURT: Very good.

8 Why don't we have her in the box before the jury comes
9 in so that they are not wasting time watching her march
10 forward.

11 And government, your next witness will still be Elie
12 Gabay?

13 MR. BHATIA: That's right.

14 THE COURT: Very good.

15 And that witness will be here and ready to go as soon
16 as Finocchiaro is done?

17 MR. BHATIA: That's right.

18 THE COURT: Terrific.

19 All right. I will be ready to take the bench at 9:30,
20 or as soon as Mr. Smallman tells me thereafter that the jury is
21 here. Thank you, see you at 9:30.

22 (Recess)

23 MR. GELFAND: Your Honor, may I approach and provide
24 you two copies of exhibits?

25 THE COURT: You may.

K1NVTEM1

Finocchiaro - cross

1 These are defense exhibits that may or may not be used
2 during this witness's examination?

3 MR. GELFAND: Correct, your Honor.

4 THE COURT: Very good.

5 MR. GELFAND: Thank you.

6 THE COURT: Is this one set or two?

7 MR. GELFAND: That's one set, your Honor. I was not
8 aware of the request for the law clerk.

9 THE COURT: Oh, okay. Going forward, that would be
10 great. Thank you.

11 (Jury present)

12 THE COURT: I hope you all had a good evening.

13 We're about to resume with the trial.

14 Ms. Finocchiaro, I'll remind you that you're still
15 under oath.

16 THE WITNESS: Yes.

17 THE COURT: Mr. Gelfand, you may inquire.

18 MR. GELFAND: Thank you, your Honor.

19 KAREN FINOCCHIARO, resumed.

20 CROSS-EXAMINATION (continued)

21 BY MR. GELFAND:

22 Q. Good morning, Ms. Finocchiaro.

23 A. Good morning.

24 Q. Can I ask you to speak up a little bit in the mic.

25 A. Good morning.

K1NVTEM1

Finocchiaro - cross

1 Q. Good morning.

2 Ms. Finocchiaro, when we left off yesterday, we had
3 ended our discussion on the March 28th, 2019 RCCs; correct?

4 A. Correct.

5 Q. And as you testified, those were two of the 29 total RCCs
6 that are at issue in this case; correct?

7 A. That is correct.

8 Q. And you're familiar with all of the RCCs, not just the two
9 that we discussed; correct?

10 A. Correct.

11 Q. Okay. And as we talked about yesterday, all 29 of those
12 RCCs clearly bear indicia to the bank that they are, in fact,
13 RCCs; correct?

14 A. Correct.

15 Q. Okay. Now, directing your attention to the April 19th --
16 if I have the date right -- 2019, deposits, there were 27
17 deposits in the bank that you testified -- I'm sorry, the
18 deposits of 27 RCCs into the bank that you testified about
19 yesterday; correct?

20 A. Correct.

21 Q. And we talked about what actually happened in the bank
22 itself; correct?

23 A. Correct.

24 Q. And the screenshots that you provided from the video
25 footage that you collected early on in this matter; correct?

K1NVTEM1

Finocchiaro - cross

1 A. Correct.

2 Q. And to be clear, the video itself is no longer available;
3 correct?

4 A. Correct.

5 Q. Are you aware that we have requested the video, but that
6 your bank told us that it's no longer available?

7 A. Correct. If it's after 120 days, it's no longer available.

8 Q. Okay. And to be clear, early on, as far as you know, at
9 least, no one on the bank took any efforts to preserve the
10 video itself, as opposed to the screenshots that we've all
11 seen; correct?

12 A. As far as I'm aware, there was not a preservation letter
13 that was requested to save the film.

14 Q. Okay. During that time period, you were in contact with
15 the NYPD detective; correct?

16 A. That is correct.

17 Q. And the NYPD never requested that that be preserved;
18 correct?

19 A. That is correct.

20 Q. Did the film video footage have audio as well or is it just
21 soundless?

22 A. It does not have audio.

23 Q. Okay. So based on your review of the film -- well, just to
24 be clear, you've watched the whole film; correct?

25 A. Correct.

K1NVTEM1

Finocchiaro - cross

1 Q. Based on your review of the film, as you described
2 yesterday, it was -- and I'm approximating, but approximately a
3 one-hour video of Mr. Teman physically in the Miami bank
4 branch; correct?

5 A. I don't recall the duration, but there was a lengthy
6 period.

7 Q. In other words, this wasn't some two-minute episode of
8 going to a bank teller; correct?

9 A. Not that I recall.

10 Q. Now, I want to direct your attention to some of those April
11 19th RCCs. I'm showing you what's been previously admitted as
12 Government's Exhibit 205.

13 THE COURT: Ladies and gentlemen, can everyone see the
14 monitor okay?

15 THE JURY: Yes.

16 THE COURT: Good.

17 Q. And you recognize this document; correct?

18 A. I do.

19 Q. Okay. When the prosecutor asked you about some of these
20 RCCs yesterday, is it fair to say that the numbers might be
21 different and the entities are the three entities identified in
22 this case, but that substantively these are virtually identical
23 documents?

24 A. They are similar. Some of them are different, with the
25 disclosure that's read.

K1NVTEM1

Finocchiaro - cross

1 Q. To be clear, on each of these April 19th, 2019 documents,
2 the same language appears on the bottom; correct?

3 A. I believe -- without looking at all of the checks in that
4 series, I do believe that they are all similar with this, this
5 disclosure.

6 Q. Okay. I'm happy to show you them, but it sounds like
7 you're fairly confident?

8 A. Yes.

9 Q. Okay. So if we look at just any of them, for example, this
10 is the top page, Bates No. 35 of Exhibit 205, they all clearly
11 say, "Draw per contract. No signature required." Correct?

12 A. Correct.

13 Q. They all include the URL that you testified about
14 yesterday; correct?

15 A. Correct.

16 Q. They indicate that the above client, referring in this
17 case, for example, to ABJ Lennox LLC, accepted the terms;
18 correct?

19 A. They do -- that's what the check indicates, that draw per
20 contract.

21 Q. I'm just asking you what it says. To be clear, you don't
22 know one way or the other whether or not those individuals
23 accepted the terms or didn't; correct?

24 A. That is correct.

25 Q. To this day, Bank of America is not taking a position on

K1NVTEM1

Finocchiaro - cross

1 whether that's a true statement or a false statement; correct?

2 A. That is correct.

3 THE COURT: Ms. Finocchiaro, just kindly keep your
4 voice up. Speak a little more into the microphone.

5 A. That is correct.

6 THE COURT: Thank you.

7 Q. And then there is the contact info that you testified about
8 that is GateGuard's contact number; correct?

9 A. I would believe that would be GateGuard's contact
10 information if it was provided on the document.

11 Q. You testified that you couldn't access the URL just because
12 of, essentially, Bank of America's IT filter?

13 A. Correct.

14 Q. Correct.

15 And you didn't make any efforts to look through other
16 avenues, like your phone or home computer or anything like
17 that; correct?

18 A. Correct.

19 Q. Did you ever call this number with questions?

20 A. I did not.

21 Q. You described, based on your experience in the banking
22 industry, various characteristics of checks or RCCs in general;
23 correct?

24 A. Correct.

25 Q. And one of the things that you testified about was the memo

K1NVTEM1

Finocchiaro - cross

1 line; correct?

2 A. Correct.

3 Q. Is it fair to say that the memo line, as far as Bank of
4 America is concerned, is not a particularly important line?

5 A. It's a description line, so it's not -- I mean, it does
6 give a description of what the check may be for, but it's
7 typically in reference for the -- if the customer were to have
8 viewed the check, so the maker, that they would have a
9 description of what that was for.

10 Q. Okay. Basically, a shorthand convenience factor for the --

11 A. Correct. It's not required.

12 Q. Okay. And so fair to say when it comes to whether the bank
13 honors or doesn't honor -- and when I say "the bank," I mean
14 Bank of America, honors or doesn't honor a check, the memo line
15 itself is not a factor?

16 A. It is not.

17 Q. Now, these 27 RCCs do not include or purport to include any
18 sort of check number; correct?

19 A. They do not.

20 Q. They don't contain any signature; in fact, they say that in
21 very clear terms. Correct?

22 A. Correct.

23 Q. And just to be clear, for the benefit of all of us, there's
24 some notations on the top. Those are bank notations; correct?

25 A. That is correct.

K1NVTEM1

Finocchiaro - cross

1 Q. In other words, this was not -- whatever handwriting up
2 here is on the top left corner of some of these checks, I don't
3 mean this in a bad way, but that's something the bank wrote on
4 it, not what either Mr. Teman wrote --

5 A. I do believe that it's something that the teller has -- has
6 signed or put their initials on.

7 Q. Now, you testified yesterday when the government showed you
8 that voluminous spreadsheet --

9 A. Yes.

10 Q. -- that there was a reference to counter credit on April
11 19th of 2019; correct?

12 A. Correct.

13 Q. Okay. To be clear, that's also reflected in Government
14 Exhibit 102, which is admitted.

15 Can you just tell me, do you recognize what this
16 document is, just so we can contextualize ourselves?

17 A. That is the customer statement for GateGuard.

18 Q. I'm sorry?

19 A. For GateGuard.

20 Q. These are Bank of America's bank statements, if you will,
21 for GateGuard for a select period of time?

22 A. That is correct.

23 Q. You provided these to the government; correct?

24 A. I did. That is correct.

25 Q. And if we look through this statement just briefly, we see

K1NVTEM1

Finocchiaro - cross

1 the relevant time frame for April; correct?

2 A. That is correct, yes.

3 Q. And we see on April 19th of 2019 the counter credit
4 referenced in the amount of \$297,000; correct?

5 A. That is correct.

6 Q. And even though this is a different document, this is
7 essentially the document or the same data from which the
8 spreadsheet was populated; correct?

9 A. That is correct.

10 Q. To be clear, when the deposit was made, a deposit slip was
11 completed and kept in the ordinary course and practice of the
12 bank; correct?

13 A. That is correct.

14 Q. Okay.

15 And just so we all understand, what is a deposit slip?

16 A. A deposit slip is something that the customer fills out
17 when they are making the deposit. It has the customer's name,
18 account number that it's being deposited to, and the amount
19 that is being deposited. It describes whether you're
20 depositing cash or whether you're depositing checks.

21 Q. I'm showing you what's been admitted as Government's
22 Exhibit 206. Can you tell us what that is?

23 A. That is the deposit slip on 4/19 for the deposit to
24 GateGuard for the amount of \$297,000.

25 Q. Okay. So to be clear, just in simple English, this is the

K1NVTEM1

Finocchiaro - cross

1 deposit slip that correlates with the deposit that you've been
2 testifying about; correct?

3 A. That is correct.

4 Q. And you pulled this and provided it for the government;
5 correct?

6 A. That is correct.

7 Q. It references April 19th, the date; correct?

8 A. Correct.

9 Q. It references the same amount; correct?

10 A. That is correct.

11 Q. And it references GateGuard and its business location in
12 Miami Beach on that same road as the bank branch, Lincoln Road;
13 correct?

14 A. That is correct.

15 Q. Now, if we look -- it's a little bit tough to see. I'm
16 showing you on the bottom -- I'm going to zoom in as much as I
17 can. Can you see that on the screen in front of you, ma'am?

18 A. I can, yes.

19 Q. Okay. This text that appears on the bottom, that's
20 generated by the bank; correct?

21 A. That is correct.

22 Q. Okay. And it references the date, the time, the deposit;
23 correct?

24 A. That is correct.

25 Q. The available balance of approximately 20-some thousand

K1NVTEM1

Finocchiaro - cross

1 dollars; correct?

2 A. That is correct.

3 Q. And then can you read the part that I've circled on the
4 screen, beginning with "holds"?

5 A. "Holds applied see hold notice deposit."

6 Q. Okay. What does that mean?

7 A. It means that applicable holds were placed on the checks
8 that are coming in.

9 Q. When you say "holds were placed," that means that
10 GateGuard, Mr. Teman, whoever you want to say, didn't have
11 access to this money until the holds were lifted; correct?

12 A. That is correct.

13 Q. Okay. So to be clear, when we see things like counter
14 credit of \$297,000 on April 19th, no one actually had access to
15 that money on that day; correct?

16 A. On that day, he would not have had access to that; he would
17 have only had access to what is indicated as the available
18 balance.

19 Q. Which was the amount of money previously in the account
20 that has nothing to do with these deposits; correct?

21 A. That is correct.

22 Q. So, in other words, he would have access to the money he
23 had, he wouldn't have access to the money that was deposited
24 via these RCCs?

25 A. Right. He can see the deposit and he can see the amount in

K1NVTEM1

Finocchiaro - cross

1 there, but he's not able to access the account at that time.

2 Q. And, in fact, as a bank employee of Bank of America, an
3 investigator for two decades plus, are you familiar with bank
4 forms?

5 A. Yes.

6 Q. Are you familiar with -- this says "see hold notice." Are
7 you familiar with Bank of America notices of hold?

8 A. Typically, yes. Our holds are for two days if they are an
9 on-us check, meaning that it's a Bank of America check that's
10 being deposited. Obviously we have the ability at that time to
11 see the source of funds in another account. Our hold notices
12 are, in fact, typically seven days for a check that is another
13 bank. So in this case, Signature or JPMorgan Chase, we would
14 apply a seven-day hold.

15 Q. Okay. And, in fact, that's exactly what happened here;
16 correct?

17 A. That is correct.

18 Q. And this notice of hold, that's basically a receipt that's
19 given to the person making the deposit; correct?

20 A. That is correct.

21 Q. Okay. And have you seen the notice of hold that was issued
22 in this case?

23 A. I did not see -- I mean, I noticed that there was a hold
24 that was applied, it's a standard typical hold; but I didn't
25 see any additional documentation in regards to the hold.

K1NVTEM1

Finocchiaro - cross

1 MR. GELFAND: Okay. If I may approach and show the
2 witness what's been premarked as Defense Exhibit 16.

3 THE COURT: This is just for the witness right now,
4 it's not in evidence.

5 MR. GELFAND: Yes.

6 THE COURT: All right.

7 Ladies and gentlemen, from time to time, a document
8 will be shown or an exhibit will be shown to the witness and
9 will be accessible to counsel and not to you. The reason
10 that's happening is that until I rule that the exhibit can be
11 received in evidence, you can't see it.

12 So I need to look at it, the witness needs to look at
13 it, the lawyers may need to ask questions to the witness about
14 it. Once I decide it can properly be received in evidence,
15 Mr. Smallman pushes a button, and then it's accessible to you.
16 We're not trying to hide anything from you; I just need to go
17 through the hoops of making sure that it's properly received in
18 evidence.

19 Go ahead.

20 MR. GELFAND: Thank you.

21 THE COURT: Mr. Smallman. Yes. Very good.

22 Go ahead.

23 BY MR. GELFAND:

24 Q. I'll zoom in on the text, but just so that we're clear for
25 the record, can you see the whole context of this document

K1NVTEM1

Finocchiaro - cross

1 right now?

2 A. It's cut off on the side.

3 Q. To be clear, this was not directly provided by the bank;
4 correct?

5 A. I did not provide this.

6 Q. Okay.

7 MR. GELFAND: Your Honor, can I show the witness a
8 hard copy of this? I think it's pretty tough --

9 THE COURT: I'm sorry, Mr. Gelfand, a little louder.

10 MR. GELFAND: Can I show the witness a hard copy of
11 this?

12 THE COURT: You may. It appears though what's on the
13 screen is cut off on the document itself.

14 MR. GELFAND: Yes, your Honor.

15 BY MR. GELFAND:

16 Q. Does that appear to be a photograph of a notice of hold
17 form issued by Bank of America?

18 A. It does appear to be.

19 Q. And specifically, if you look -- without reading it into
20 the record, if you look at the dates, the total deposit number,
21 and the hold code, does this appear to correlate with the
22 deposit slip and the April 19th deposit?

23 A. Yes, it does.

24 MR. GELFAND: Your Honor, at this point I would move
25 Defense Exhibit 16 into evidence.

K1NVTEM1

Finocchiaro - cross

1 THE COURT: Any objection?

2 MR. BHATIA: No objection, your Honor.

3 THE COURT: Defense Exhibit 16 is received.

4 (Defendant's Exhibit 16 received in evidence)

5 THE COURT: Do you now want that published to the
6 jury?

7 MR. GELFAND: Yes, your Honor.

8 THE COURT: Mr. Smallman. Thank you.

9 MR. GELFAND: Thank you.

10 THE COURT: All right. Ladies and gentlemen, it
11 should now be on your monitors.

12 Sorry. It should now be on your monitors.

13 MR. GELFAND: When I do my job.

14 BY MR. GELFAND:

15 Q. So this is a little bit tough to read on just the
16 presentation of it, but can you just read for all of us the
17 date of the notice of hold?

18 A. 4/19/2019.

19 Q. And then the amount is the same, \$297,000?

20 A. That is correct.

21 Q. This is unfortunately going to be very difficult for the
22 jury to read, but can you tell us when the \$292,000 will be
23 available?

24 A. On 4/26 of 2019.

25 Q. So seven days later; correct?

K1NVTEM1

Finocchiaro - cross

1 A. Correct.

2 Q. And that's consistent with what you testified you
3 anticipated the hold would be; correct?

4 A. Correct.

5 Q. Fair to say that's what happened here?

6 A. Correct.

7 Q. So between April 19th and April 26th, the money was not
8 available to anyone; correct?

9 A. Correct.

10 Q. Okay. And, in fact, based on your review of what actually
11 happened at the bank branch, Mr. Teman was actually handed this
12 notice of hold; correct?

13 A. It should have been -- it was provided, yes.

14 Q. Okay. And there wasn't any pushback by Mr. Teman of, Hold
15 on. If it's not available right now, let me have these RCCs
16 back, or anything crazy like that, right?

17 A. I wasn't present. I'm unaware.

18 Q. Based on what you observed on the video that you watched
19 that's no longer available, does anything like that appear?

20 A. There's no audio, so I'm unable to indicate.

21 Q. The deposits maintained -- I'm sorry, the RCCs were
22 maintained in Bank of America's possession after that
23 interaction with the teller; correct?

24 A. Correct.

25 Q. Now, you then testified that --

K1NVTEM1

Finocchiaro - cross

1 THE COURT: Mr. Gelfand, can the witness put the
2 exhibit down?

3 MR. GELFAND: Yes, your Honor.

4 THE COURT: Okay.

5 MR. GELFAND: Thank you.

6 Q. The purpose of the hold is to confirm that the funds should
7 be made available; correct?

8 A. Right. It levels as an expectation for the customer that
9 the funds are on hold and when the funds would be available.

10 Q. Now, the government showed you what's been marked as
11 Exhibit 114. Do you recognize that document?

12 A. I do, yes.

13 Q. Over and over on this document there's the text "RCC
14 warranty breach"; correct?

15 A. Correct.

16 Q. And that's under the column "Reason"; correct?

17 A. That is correct.

18 Q. Does Bank of America populate that column?

19 A. This is something that is digitally sent to us with the
20 reason code and the explanation of the reason code from the
21 maker bank.

22 Q. Okay. So to be clear, Bank of America is not
23 characterizing the event as an RCC warranty breach; in this
24 case, Signature Bank and JPMorgan are doing that. Correct?

25 A. That is correct.

K1NVTEM1

Finocchiaro - cross

1 Q. Bank of America is just reporting what's told to Bank of
2 America; correct?

3 A. That is correct.

4 Q. And if we look through this document, these RCC warranty
5 breach notations are correlated with many of the RCCs that were
6 received in evidence; correct?

7 A. That is correct.

8 Q. And on the second page of this document, we see that
9 language again, and then the prosecutor asked you questions
10 about the five or four, quote/unquote, counterfeit check
11 designations at the bottom; correct?

12 A. That is correct.

13 Q. And this was the same reason code column; correct?

14 A. Correct.

15 Q. Okay. So again, this is not Bank of America saying this is
16 a counterfeit check; correct?

17 A. That is correct.

18 Q. This is the reason or the code generated by, you said, the
19 maker bank, I just want to be very precise, Signature and/or
20 JPMorgan?

21 A. That is correct.

22 Q. And is it fair to say that what's basically being
23 communicated to Bank of America in this instance is that those
24 banks' customers are saying that this is an unauthorized RCC?

25 A. That is correct.

K1NVTEM1

Finocchiaro - cross

1 Q. In charging back -- I think that's the term you used
2 yesterday; correct?

3 A. A chargeback; correct.

4 Q. In requesting or insisting on chargebacks from Bank of
5 America, none of these other banks provided the GateGuard terms
6 and conditions or payment terms to Bank of America; correct?

7 A. That is not required.

8 Q. Fair enough. But I'm just asking if that happened?

9 A. They did not.

10 Q. Okay. Now, when you testified yesterday, you testified to
11 that document. But the bank also sends individuals -- in this
12 case account holders like GateGuard -- correspondence if checks
13 are basically returned; correct?

14 A. That is correct. It is provided.

15 MR. GELFAND: Your Honor, at this point, pursuant to
16 the stipulation read by government counsel yesterday, I would
17 move into evidence Defense Exhibit 52.

18 THE COURT: Any objection?

19 MR. BHATIA: No objection.

20 THE COURT: Received.

21 (Defendant's Exhibit 52 received in evidence)

22 MR. GELFAND: May I publish it, your Honor?

23 THE COURT: You may.

24 Q. Do you see Exhibit 52?

25 A. Yes, I do.

K1NVTEM1

Finocchiaro - cross

1 Q. Okay. And these use the same language, "RCC breach" on
2 them; correct?

3 A. Correct.

4 Q. And then on the side, Bank of America says: "Return
5 reason-4 RCC warranty breach"; correct?

6 A. That is correct.

7 Q. And they reference copies, in this case, of 24 checks;
8 correct?

9 A. I haven't seen all of the checks, but most of the checks
10 should be present on the document.

11 Q. Okay. I'll ask it another way.

12 The bank provided copies of each of the RCCs that are
13 at issue in --

14 A. That is correct. Yes.

15 Q. And that would be inclusive in the document; correct?

16 A. Correct.

17 Q. Okay. And what does "return reason-4" mean, if you know?

18 A. I don't know the code right offhand.

19 Q. But, again, what this is communicating to the customer,
20 GateGuard, is that these were RCCs that were basically not
21 honored by the customer, for example, ABJ or the others on
22 here?

23 A. That is correct.

24 Q. So Bank of America is not saying to Mr. Teman or GateGuard,
25 These are counterfeit checks, these are fake checks, anything

K1NVTEM1

Finocchiaro - cross

1 along those lines. They are saying, We processed them as RCCs.
2 And the banks that they were drawn on said that their customers
3 are saying we didn't authorize this?

4 A. In regards to the RCCs, their return reason is RCC.
5 However, some of them are listed as counterfeit.

6 Q. By those banks; correct?

7 A. That is correct.

8 Q. Okay. Now, in processing the RCCs, you testified that
9 there was the seven-day hold. And then yesterday the
10 prosecutor walked you through transfers within Bank of America
11 of money that followed, started on April 26th and followed the
12 next couple of weeks; correct?

13 A. That is correct.

14 Q. Okay. And, in fact, each of those transfers were made from
15 GateGuard's Bank of America account to other Bank of America
16 accounts; correct?

17 A. That is correct.

18 Q. And each of those accounts, starting with, for example, the
19 corporate accounts, Friend or Fraud Incorporated, Touchless
20 Labs LLC, those are other businesses that Bank of America holds
21 accounts for, held accounts for, that were associated with Ari
22 Teman; correct?

23 A. Correct.

24 Q. And the bank was on notice for quite some time that these
25 were Ari Teman's businesses; correct?

K1NVTEM1

Finocchiaro - cross

1 A. Correct.

2 Q. So I showed you, for example, the signature card yesterday
3 for GateGuard; correct?

4 A. Correct.

5 Q. I'm going to show you Government Exhibit 103 real briefly.
6 Is this the signature card for Friend or Fraud?

7 A. It is, yes.

8 Q. And does it reference that Friend or Fraud is controlled by
9 Ari Teman, at least as far as the bank is concerned, since
10 April of 2016?

11 A. That is correct.

12 Q. And similarly, I'm going to show you Government Exhibit
13 105. Again, just at least as far as the bank is concerned,
14 does it show you Touchless Labs LLC as controlled by Ari Teman
15 since March of 2016?

16 A. Yes, it does.

17 Q. And these are Delaware entities; correct?

18 A. That is correct.

19 Q. So to be clear, when money was moved, money was moved
20 essentially from one account that Ari Teman controlled to other
21 accounts that Ari Teman controlled as far as Bank of America is
22 concerned?

23 A. That is correct.

24 Q. And have you reviewed the bank records of these entities?

25 A. Yes, I have.

K1NVTEM1

Finocchiaro - cross

1 Q. Fair to say that they are operating entities, at least they
2 appear to be based on the transactions?

3 A. Yes.

4 MR. BHATIA: Objection, your Honor.

5 THE COURT: One moment.

6 Sustained.

7 Q. Are there deposits into these accounts?

8 A. I'd need to see the records for each of those accounts, but
9 based on my recollection, I do believe that there was other
10 deposits and other transactions in those accounts.

11 Q. In other words, unrelated to GateGuard?

12 A. Correct.

13 Q. Now, you testified that on April 26, some money was moved
14 from the Friend or Fraud corporate account to an individual
15 account also at Bank of America held in the name of Ari Teman;
16 correct?

17 A. Correct.

18 Q. And, in fact, there were some questions about money from
19 that account. And a couple of days later, on April 29th and
20 May 1st, the prosecutor asked you about international wire
21 transfers to China; correct?

22 A. Correct.

23 Q. And you read -- well, rack your brain on what the company
24 was, but there was a Chinese entity bank account that those
25 checks were sent to; correct?

K1NVTEM1

Finocchiaro - cross

1 A. Correct.

2 Q. Are you aware that that company is a supplier for
3 GateGuard?

4 MR. BHATIA: Objection.

5 THE COURT: Sustained.

6 Q. You testified on May 8th that \$4,000 was withdrawn in cash;
7 correct?

8 A. That is correct.

9 Q. To be clear, what's a cashier's check?

10 A. A cashier's check is an official item that the customer can
11 purchase from their account so the cash is withdrawn, it's
12 turned into an official item.

13 Q. Okay. And to be clear, what happened here is that,
14 quote/unquote -- let's back up for a second.

15 If I walk into a Bank of America branch and I purchase
16 a \$4,000 cashier's check, for example, the bank's not
17 physically handing me \$4,000 of cash and I'm not physically
18 handing it back; correct?

19 A. Correct.

20 Q. The bank is basically treating it as a, quote/unquote, cash
21 withdrawal, but, for all intents and purposes, just giving me a
22 cashier's check to whomever I ask it be written out to;
23 correct?

24 A. Correct.

25 Q. And the reason that a cashier's check is significant is

K1NVTEM1

Finocchiaro - cross

1 that the person receiving it has security that the bank will
2 honor it?

3 A. It's an official item that's then drawn on the bank. And
4 it's not specific to that account any longer, it's -- it's an
5 official item that's issued by the bank.

6 Q. Okay. In this particular case, if you know, was a
7 cashier's check issued to a Levi Herman on that day in the
8 amount of \$4,000?

9 A. I'm unable -- I do not have that information.

10 Q. Okay. That wouldn't be reflected in the bank statements
11 though; correct?

12 A. It would not.

13 Q. It would just be reflected as a, quote/unquote, cash
14 withdrawal; correct?

15 A. Correct.

16 Q. Is it fair to say, based on the bank statements you've
17 reviewed, you can't say one way or the other whether Mr. Teman
18 walked out of the bank with cash or walked out of the bank with
19 a cashier's check to an individual?

20 A. Unless it's an exhibit, I'm unable to.

21 Q. And it's not something that was provided to the government;
22 correct?

23 A. Not that I recall.

24 Q. Okay. Now, after the bank received the RCC chargebacks
25 from Signature Bank and JPMorgan Chase, the bank had

K1NVTEM1

Finocchiaro - cross

1 interactions with Ariel Reinitz on GateGuard's behalf; correct?

2 A. Can you say the name again?

3 Q. Let me ask this: Are you aware that GateGuard's attorney
4 had communications with Bank of America in May of 2019 about
5 the nature of what you've testified about, about these RCCs?

6 MR. BHATIA: Objection, your Honor. 401, 403.

7 THE COURT: Foundation. Sustained.

8 Q. Ms. Finocchiaro, the bank -- the government asked you
9 questions on direct examination about how the bank was
10 considering the offset issue yesterday; correct?

11 A. Correct.

12 Q. In the context of those discussions, did the bank have
13 communications with GateGuard's legal counsel, Ariel Reinitz?

14 MR. BHATIA: Objection.

15 THE COURT: Sustained. Lack of foundation.

16 She's a records custodian. You can ask her if she had
17 those communications.

18 Q. Have you seen records of communications held by the bank
19 with any attorney on behalf of GateGuard?

20 MR. BHATIA: Objection.

21 THE COURT: Just a yes or no.

22 A. Yes.

23 Q. And based on your review of those records, were there
24 communications -- I'm not asking about the substance of them.

25 Were there communications between GateGuard's legal counsel and

K1NVTEM1

Finocchiaro - cross

1 Bank of America about the offset issue?

2 THE COURT: Just a yes or a no.

3 A. Trying to recall. I do not believe that there was any
4 questions in regards to the offset.

5 THE COURT: Mr. Gelfand, if the records are not in
6 evidence, it would be hearsay for her to be speaking about
7 their content. Let's move on.

8 Q. Now, you testified yesterday that the bank essentially is
9 holding a significant amount of money from GateGuard and other
10 accounts that you've testified about, Touchless Labs, etc.;
11 correct?

12 A. The bank has the funds that are in -- being -- that are in
13 an account; they are not being held. The checks were -- in
14 fact, I had indicated yesterday -- sent to the mailing address
15 for Mr. Ari B. Teman in regards to each and every account. And
16 the checks were returned to the bank based on the address
17 provided.

18 Q. Now, during this whole time period, what I mean by "this
19 whole time period" is between March and April of 2019, when the
20 RCCs were deposited and when Bank of America was made aware
21 that there was a criminal investigation, the bank had processed
22 these as basically breach warranty RCCs; correct?

23 A. They were processed as breach of warranty and counterfeit,
24 yes.

25 Q. And is it fair to say that the government, meaning law

K1NVTEM1

Finocchiaro - cross

1 enforcement, came to Bank of America requesting information
2 about this as opposed to Bank of America going to law
3 enforcement?

4 MR. BHATIA: Objection.

5 THE COURT: Foundation. Sustained.

6 Q. When did you first become involved in providing information
7 to the government, meaning law enforcement, in connection with
8 this case?

9 A. It was on April the -- or, I'm sorry, May the 15th.

10 Q. Did you contact them or did they contact you?

11 A. They were in contact with me.

12 Q. I'm sorry, I couldn't hear you.

13 A. They were in contact with me.

14 Q. Okay. Who initiated the contact?

15 MR. BHATIA: Objection. 401 and 403.

16 THE COURT: Sustained. Relevance.

17 Q. Over the course of the next several months, you provided
18 information to the government in connection with this case from
19 the bank; correct?

20 MR. BHATIA: Objection.

21 THE COURT: Overruled.

22 A. I was in contact and I did provide information in regards
23 to the account.

24 Q. Finally, just showing you, just briefly, again, for
25 example, Defense Exhibit 52, just an example of one of the

K1NVTEM1

Finocchiaro - cross

1 RCCs, as far as -- well, to be clear for a second, these were
2 all made payable to GateGuard, Inc., the corporation; correct?

3 A. That is correct.

4 Q. Fair to say the bank doesn't know one way or the other
5 whether there's anything on here that is false?

6 A. When the check is presented, we're not aware at that time.

7 Q. And to be clear, as you previously testified, you don't
8 know whether anything in this "draw per contract" box is false;
9 correct?

10 A. Correct.

11 Q. And the rest of the RCCs basically just include the payor,
12 the payee, the dollar amount, the memo line, and the date;
13 correct?

14 A. Correct.

15 MR. GELFAND: Your Honor, may I have one minute?

16 THE COURT: You may.

17 (Counsel conferred)

18 MR. GELFAND: I have no further questions.

19 Thank you, ma'am.

20 THE COURT: All right.

21 Thank you, Mr. Gelfand.

22 Any redirect, Mr. Bhatia?

23 MR. BHATIA: Excuse me?

24 THE COURT: Any redirect?

25 MR. BHATIA: Yes, your Honor.

K1NVTEM1

Finocchiaro - redirect

1 REDIRECT EXAMINATION

2 BY MR. BHATIA:

3 Q. Ms. Finocchiaro, you testified -- you were asked some
4 questions about Bank of America's financial responsibilities,
5 right?

6 A. That is correct.

7 Q. And do you recall being asked some questions on
8 cross-examination about how Bank of America reviews checks?

9 A. Yes.

10 Q. And its obligations when funds are coming out of accounts?

11 A. Correct.

12 Q. And are accounts at Bank of America insured by the Federal
13 Deposit Insurance Corporation?

14 A. Yes, they are.

15 Q. That's the FDIC?

16 A. Yes, they are.

17 Q. And when Bank of America is trying to determine if a check
18 is authorized, if it's legitimate, is it trying to find out if
19 the person receiving the money is authorized to receive it or
20 if the person sending the money authorized the money to be
21 sent?

22 A. It's authorizing was the money authorized to be sent and
23 received.

24 MR. BHATIA: Could we pull up as an example Government
25 Exhibit 201. We can go to the top of this page. Thank you.

K1NVTEM1

Finocchiaro - redirect

1 Q. So just to get a little bit more specific, this was a check
2 deposited at Bank of America?

3 A. That is correct.

4 Q. And you were asked some questions about whether this
5 signature is Ari Teman's; is that right?

6 A. Correct.

7 Q. Or whether it looks like the ones on the signature cards?

8 A. Correct.

9 Q. And Ari Teman is GateGuard -- or is the signatory for
10 GateGuard, right?

11 A. Yes. Correct.

12 Q. What information -- so he was the one getting the money,
13 right?

14 A. He was the one receiving the funds, essentially, on behalf
15 of GateGuard.

16 Q. The person receiving the funds is usually happy to get
17 them?

18 MR. GELFAND: Objection, your Honor.

19 THE COURT: One moment.

20 Sustained.

21 Q. The person who was sending -- the person who was going to
22 have less money than they had before was up here, right, 518
23 Coney 205 LLC?

24 A. In this check case, yes.

25 Q. And what information did the bank receive about whether

K1NVTEM1

Finocchiaro - redirect

1 that person had authorized the check?

2 A. If the initial deposit we didn't have any information, it
3 goes to the clearinghouse process, the Federal Reserve. And
4 then we receive back the information. So at the time of the
5 deposit we did not.

6 Q. And at the time, what -- subsequently, what information did
7 the bank get about whether that person, 518 West 205 LLC, had
8 approved the check?

9 A. We received the information that they were not approving
10 this check; that essentially it was a breach of warranty and,
11 in some cases, they were counterfeit.

12 Q. And is that true of all of the 29 checks that you testified
13 about?

14 A. That is correct.

15 Q. So you received information that the person sending the
16 money had not authorized it?

17 A. Correct.

18 Q. And the bank wasn't as interested in whether the person
19 receiving the money was authorized to receive it?

20 A. Correct.

21 Q. Do you recall answering some questions about a hold, a
22 seven-day hold?

23 A. Yes.

24 Q. Do you recall that the day that checks were deposited in
25 April was April 19, 2019?

K1NVTEM1

Finocchiaro - redirect

1 A. It was April 19th, 2019.

2 Q. There's a seven-day hold, right?

3 A. That is correct.

4 Q. And so that would be, I think -- seven days -- April 26th?

5 A. That is correct.

6 Q. Okay.

7 MR. BHATIA: Mr. Magliocco, could you pull up
8 Government Exhibit 102 and page 3 of that document.

9 (Continued on next page)

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Klndtem2

Finocchiaro - redirect

1 (Pause)

2 MR. BHATIA: Excuse me. It is the document with Bates
3 number 958 at the bottom.

4 THE COURT: This is a part of Exhibit 102?

5 MR. BHATIA: That is right.

6 BY MR. BHATIA:

7 Q. If I can direct your attention to the bottom of this page,
8 to the section titled, "Withdrawals and other Debits.

9 Do you recall testifying yesterday about the account
10 035 -- 0351 is the Friend or Fraud account?

11 A. That is correct.

12 Q. And 5580 is Ari Teman's personal account?

13 You can take a look at the exhibits in front of you,
14 Government Exhibits 107 or 108.

15 (Pause)

16 A. 5580 is the personal account for Ari Teman.

17 Q. OK. So the hold on the \$297,000, the balance of that was
18 released on April 26, 2019, right?

19 A. That is correct.

20 Q. That's the date he was able to -- that was the date most of
21 those funds were available?

22 A. That is correct.

23 Q. And is it right that on this document if it shows that on
24 April 26, 2019, the day those funds were available, there was
25 that day a transfer of \$225,000 to the Friend or Fraud account?

Klndtem2

Finocchiaro - recross

1 A. Yes, there was.

2 Q. On that same day there was a transfer of \$3,600 into the
3 Ari Teman's personal account?

4 A. That is correct.

5 Q. And then three days later there is a transfer of 5,500 in
6 the same account?

7 A. That is correct.

8 Q. So those were all within three days of when those funds
9 became available, right?

10 A. The same day and three days later, yes.

11 MR. BHATIA: No further questions, your Honor.

12 THE COURT: All right. Any recross, Mr. Gelfand?

13 MR. GELFAND: Very briefly, your Honor.

14 THE COURT: Of course.

15 RECROSS-EXAMINATION

16 BY MR. GELFAND:

17 Q. The prosecutor just asked you a few minutes ago whether the
18 bank had received information that the checks were not
19 authorized, correct?

20 A. Correct.

21 Q. OK. To be Crystal clear, when you said that the bank got
22 information, is it fair to say that what you mean is that the
23 other banks told you that that's what their customers told
24 you -- told them?

25 A. Correct. We received the return item chargeback indicating

Klndtem2

Finocchiaro - recross

1 that they were counterfeit and in breach of warranty.

2 Q. As opposed to Bank of America making an independent
3 determination of whether that was true or not true?

4 A. We received the information from the corresponding
5 financial institution, and we rely on that information to be
6 factual.

7 Q. Do you know someone named Cheryl Harrison?

8 A. I do, yes.

9 Q. Who is Cheryl Harrison?

10 A. She is in our compliance and regulatory compliance filing
11 department.

12 Q. And what is compliance within Bank of America's context?

13 MR. BHATIA: Objection, your Honor. Scope.

14 THE COURT: Sustained. Beyond the scope.

15 MR. GELFAND: Your Honor, may we approach for
16 additional context? May we approach because I think --

17 THE COURT: For a brief sidebar, yes.

18 (Continued on next page)

Klndtem2

Finocchiaro - recross

1 (At the sidebar)

2 THE COURT: What is the issue?

3 MR. GELFAND: Your Honor, the government disclosed
4 over the weekend to us, and we actually disclosed to the
5 government, correspondence from Cheryl Harrison, who is a Bank
6 of America employee, consisting of a single email between her
7 and Ariel Reinitz on May 28th of 2019, and the email
8 correspondence directly relates to a question that the
9 prosecutor asked on redirect about what information the bank
10 got essentially as to whether these were authorized or not.
11 The information in the course of the email that was maintained
12 by the bank and provided to this witness -- and then, by
13 extension, to the government and then to us -- clearly
14 indicates that these were authorized by GateGuard's customers.

15 THE COURT: This is out of bounds for several reasons.
16 First of all, it is out of the timeframe that the witness is
17 speaking about.

18 Second of all, this is hearsay. This is a
19 communication from Ariel Reinitz, the attorney for the
20 government, to somebody else from the bank after the fact. She
21 is not part and parcel of some close investigation, and that is
22 not what the redirect is about. You are at liberty to pursue
23 this with Mr. Reinitz. You are at liberty to pursue it with
24 the other bank employee. But this witness is essentially a
25 custodian of records who is explaining the bank's holding

Klndtem2

Finocchiaro - recross

1 processes. The follow-along conversation between a lawyer for
2 Mr. Teman and somebody else are well outside the scope of the
3 inquiry that has been put here and are outside of the witness'
4 competence to address. So, sustained.

5 MR. GELFAND: OK. Thank you, your Honor.

6 (Continued on next page)

Klndtem2

Finocchiaro - recross

1 (In open court)

2 THE COURT: At the sidebar, I continued to sustain the
3 objection.

4 Mr. Gelfand.

5 BY MR. GELFAND:

6 Q. Finally, Ms. Finocchiaro, the prosecutor asked you
7 questions about whether or not the bank was insured by the
8 FDIC, correct?

9 A. Correct.

10 Q. OK. And to be clear, you also testified -- I just want to
11 make sure we are not confused on terminology -- that some of
12 these checks were processed through the Federal Reserve System,
13 correct?

14 A. Correct.

15 Q. And the FDIC and the Federal Reserve system are two totally
16 separate concepts, correct?

17 A. Correct.

18 Q. OK. Just to be clear, when you testified that these checks
19 were processed through the Federal Reserve System, to the
20 extent you know, that's basically just a way that banks in
21 American banking process checks; they don't independently
22 confirm the veracity of what is on checks or anything like
23 that, correct?

24 A. Correct.

25 MR. GELFAND: Your Honor, I have no further questions.

Klndtem2

1 Thank you.

2 THE COURT: All right. Any reredirect?

3 MR. BHATIA: No, your Honor.

4 THE COURT: All right. Ms. Finocchiaro, you may step
5 down. Your testimony is complete. Thank you.

6 (Witness excused)

7 THE COURT: Government, please call your next witness.

8 MR. BHATIA: The government calls Elie Gabay.

9 THE COURT: Ladies and gentlemen, while we wait for
10 the next witness, if you want to stretch your legs, feel free
11 to do so, or not.

12 ELIE GABAY,

13 called as a witness by the government,

14 having been duly affirmed, testified as follows:

15 THE CLERK: Please be seated.

16 State and spell your full name for the record.

17 THE WITNESS: Elie Gabay, E-l-i-e G-a-b-a-y.

18 THE COURT: All right. Good morning, Mr. Gabay. I
19 will ask you to please speak close to the mic, and keep your
20 voice up so that everyone can hear you in this old large
21 courtroom.

22 Counsel, you may inquire.

23 BY MR. BHATIA:

24 Q. Mr. Gabay, where do you work?

25 A. Coney Management.

Klndtem2

1 Q. And what is your title there?

2 A. Managing director.

3 Q. How long have you had that title?

4 A. About eleven years.

5 Q. And what kind of work does Coney Management do?

6 A. Manages commercial properties.

7 THE COURT: A little louder, please.

8 A. Manages commercial properties.

9 Q. And about how many buildings does it manage?

10 A. About 60.

11 Q. And as a general matter, where are the properties that it
12 manages?

13 A. In New York City.

14 Q. You are a managing director there. What are your
15 day-to-day responsibilities?

16 A. Overseeing the management of the properties on site and
17 overseeing the back office functions involving managing those
18 properties.

19 Q. In 2018, what role did you have in managing and overseeing
20 the financial activity of those entities?

21 A. The same as I have today. Overseeing income, rents,
22 receipts coming in, expenses, checks going out to vendors.

23 Q. Do you generally oversee the financial activity of those
24 entities?

25 A. Yes.

Klndtem2

1 Q. And does that involve approving expenses?

2 A. Yes.

3 Q. Do you also have -- what role do you have involving
4 contracts?

5 A. I negotiate contracts when necessary.

6 Q. And are you also authorized to approve them?

7 A. Yes.

8 Q. What role do you have in coordinating vendors?

9 A. I coordinate with vendors in all matters involving the
10 management of the properties.

11 Q. OK. And what role do you have involving the checking
12 accounts of those companies?

13 A. I'm a signer on some of them, and I oversee the monthly
14 reporting that we do when we reconcile those bank accounts
15 against our books.

16 Q. Are you familiar with the building at 518 West 204 Street?

17 A. Yes.

18 Q. Where is that generally?

19 A. In northern Manhattan.

20 Q. And how are you familiar with that building?

21 A. We manage the building.

22 Q. So all the things you talked about managing, do you also do
23 those for 518 West 204?

24 A. Yes.

25 Q. And are you familiar with 518 West 204 LLC?

Klndtem2

1 A. Yes.

2 Q. What is the LLC?

3 A. It's the entity that owns the property 518 West 204 Street.

4 Q. Does Coney Management itself own 518 West 204 LLC?

5 A. No.

6 Q. Who owns the company?

7 A. It's made up of a group of partners, individuals and some
8 entities.

9 Q. What is the relationship between Coney Management, where
10 you work, and the corporation 518 West 204 LLC?

11 A. We are the managing agent. Coney Management is the
12 managing agent of 518 West 204.

13 Q. What does it mean to be a managing agent?

14 A. To do all the tasks that I described earlier, to manage the
15 day-to-day operations, to oversee all financial matters
16 relating to the property.

17 Q. Do you see anyone in this courtroom who you recognize from
18 your previous business dealings?

19 A. I do.

20 Q. Who do you recognize?

21 A. Ari Teman, standing up there.

22 Q. And would you please identify Mr. Teman by an article of
23 clothing he is wearing?

24 A. A blue suit, purplish tie.

25 MR. BHATIA: Your Honor, may the record reflect that

Klndtem2

1 that witness has identified the defendant?

2 THE COURT: The record will so reflect.

3 BY MR. BHATIA:

4 Q. How did you first meet Mr. Teman?

5 A. I had met him at some trade shows relating to some of the
6 products that he was selling.

7 Q. Around when do you think you met him?

8 A. Sometime in 2016, 2017, around that time.

9 Q. You said he was selling some products. What products was
10 he selling?

11 A. He was selling technology -- my first discussions with him
12 were relating to technology to identify illegal subleases.

13 Q. What was the name of the product he was selling?

14 A. Sublet Spy.

15 Q. Did you later enroll -- did you later subscribe to Sublet
16 Spy?

17 A. I did.

18 Q. And did there come a time when you purchased another
19 product from Mr. Teman?

20 A. Yes.

21 Q. And what was that product?

22 A. GateGuard.

23 Q. What does GateGuard sell?

24 A. GateGuard is an intercom system which is placed at the
25 entrance door of commercial properties, and it was supposed to

Klndtem2

1 add an additional layer of verification and identification for
2 any parties trying to come into the building who are
3 unauthorized.

4 Q. What role does an intercom have in the safety of a building
5 at its entrance?

6 A. It makes sure that only people that are authorized to enter
7 the building enter the building and keeps anyone else out by
8 not buzzing the door unless either they are buzzed in from
9 somebody upstairs or they have a code or something like that.

10 Q. When did you first hear about GateGuard?

11 A. Sometime in late 2016, early 2017.

12 Q. And did you -- did there come a time when you met Mr. Teman
13 to discuss buying an intercom?

14 A. Yes.

15 Q. Describe that meeting.

16 A. We first discussed it at a trade show where he was showing
17 me some of the functionality and how it worked. We later had a
18 meeting in my office with some other members of my team in
19 order to get a little bit more intimately acquainted with how
20 it works and just get to know it better.

21 Q. Based on -- fair to say he gave you the sales pitch?

22 A. Yes.

23 Q. So after the sales pitch, what did you tell Mr. Teman about
24 moving forward with GateGuard?

25 A. We were considering rolling it out on a large scale across

Klndtem2

1 a big chunk of our properties, but because it was a fairly new
2 product, we would want to test it out first to see how it
3 worked.

4 Q. Just taking a step back for a minute. Where was that
5 meeting with Mr. Teman?

6 A. There was a meeting at the trade show, and that may have
7 been in Manhattan, I think, but the meeting in our office was
8 in Brooklyn.

9 Q. OK. So when you were talking about rolling it out on a
10 larger scale, what commitments did you make to Mr. Teman?

11 A. There were no commitments made at the meeting. It was
12 conceptual: This is what we think. This is how we would like
13 to see it happen.

14 Nothing was firm partially because Mr. Teman said that
15 he had a newer version that was in development which he needed
16 to fly to some other place in order to oversee the
17 manufacturing of, so the final product wasn't really in place
18 yet.

19 Q. And was there -- did you have a need for a particular
20 intercom before those later models would be available?

21 A. Yes. There came a time when we had an immediate need for
22 an intercom system at 518 West 204th Street, and that happened
23 during the time that we were having discussions. And rather
24 than put in a temporary intercom and wait for the updated model
25 to come out, we decided to talk to Mr. Teman about putting a

Klndtem2

1 system in since we had an immediate need.

2 Q. So the later model might come out later but there was an
3 immediate need for an intercom now?

4 A. Right. So we would put this one in on a temporary basis
5 and eventually swap it out.

6 Q. OK. Mr. Gabay, I'd like to direct your attention to
7 Government Exhibits 412 through 418. They are in a binder to
8 your right. If you could take -- to your left, I'm sorry. My
9 right. If you could take a look at 412 through 418 and look up
10 at me for a moment when you are finished.

11 (Pause)

12 A. 412?

13 Q. 412 through 418.

14 (Pause)

15 Mr. Gabay, just to give you an idea, I am going to ask
16 you if you recognize those documents. That is my question for
17 now.

18 A. Yes, I do.

19 Q. OK. How do you recognize 412 through 418?

20 A. These are emails that either I sent or I received.

21 MR. BHATIA: OK. And, your Honor, the government
22 offers Government Exhibits 412 through 418.

23 THE COURT: I think he needs to be more precise about
24 who the emails were with.

25 MR. BHATIA: OK.

Klndtem2

1 Q. Who were the emails with?

2 All of those emails were to or from you, right?

3 A. Yes.

4 Q. And who were the emails with?

5 A. 412 is an email from -- which is auto-generated from the
6 intercom panel, and the others are from Ari Teman.

7 Q. OK. Mr. Gabay -- your Honor, the government now offers
8 Exhibits 412 through 418.

9 THE COURT: Any objection?

10 MR. GELFAND: No, your Honor.

11 THE COURT: They are all received.

12 (Government's Exhibits 412 through 418 received in
13 evidence)

14 MR. BHATIA: Mr. Magliocco, I would like to publish
15 Government Exhibit 412.

16 Mr. Gabay, we are going to call up an exhibit for you.

17 THE COURT: Can you enlarge the exhibit? The jury is
18 struggling with it a little bit. Thank you.

19 Q. Mr. Gabay, who is this email from?

20 A. This email is from the intercom system.

21 Q. And who is this email to?

22 A. To me.

23 Q. As a general matter, what information are you getting in
24 this email?

25 A. It's a notification that Ana Esterg, from Apartment 22 at

Klndtem2

1 518 West 204th Street, got a buzz but didn't log into the
2 apartment.

3 Q. Does this message tell you that the intercom is working?

4 A. Yes.

5 Q. Did you ever receive an invoice related to this purchase?

6 A. Yes.

7 Q. I would like to direct your attention to Government Exhibit
8 413.

9 A. 413.

10 Q. So I would like to direct your attention to the top of this
11 email.

12 A. OK.

13 Q. Who is this email from?

14 A. Ari Teman.

15 Q. And who is it to?

16 A. To me.

17 Q. What is the date of this email?

18 A. January 19, 2018.

19 Q. That is the same day as you got the email saying that your
20 device is working, right?

21 A. Yes.

22 Q. And so --

23 A. Yeah, sorry.

24 Q. Is there an attachment to this email?

25 A. There is.

Klndtem2

1 Q. And is that an invoice?

2 A. Yes.

3 Q. I would like to direct your attention to page 3 of this
4 document.

5 You can follow along on the screen, if that is
6 helpful. We will blow it up for you.

7 So I would like to first direct your attention to the
8 top of this email -- of this invoice, I should say.

9 Who is this email from -- who is this invoice from?

10 A. GateGuard Inc., a division of Teman.

11 Q. And is it to you?

12 A. It has my email address on it, but it's got another entity
13 on it.

14 Q. This is the invoice that was emailed to you?

15 A. Yes.

16 Q. What is the balance on this invoice?

17 A. \$3,600.

18 Q. And if we go further down that page, we can take a look at
19 what you are being invoiced for.

20 What is the first entry on this invoice?

21 A. GateGuard Version 1 Panel.

22 Q. What is it listed here in the description?

23 A. "To be credited to Panel 2.0 monthly fees when installed."

24 Q. And the cost is \$3,600?

25 A. Yes.

Klndtem2

1 Q. And in the far right column, it says, "Line Total."

2 You are not being charged for anything else, right?

3 A. That is correct.

4 Q. The total value of this invoice was \$3,600, right?

5 A. Yes.

6 Q. What did you think you were buying when you received this
7 invoice?

8 A. I was buying the version one panel as a temporary solution,
9 and eventually it will be credited against the newer panel once
10 that came in.

11 Q. I would like to direct your attention to the bottom of this
12 page now.

13 In the bottom left corner, there is something that
14 says, "Terms." It says, "Buyer sets Terms & Conditions at
15 <https://GateGuard.xyz>." Do you see that?

16 A. I do.

17 Q. Did you click on that link?

18 A. I don't recall clicking on that link.

19 THE COURT: Sorry. A little louder, please.

20 A. I don't recall clicking on that link.

21 Q. Why not?

22 A. Why don't I recall it?

23 Q. Do you recall why you might not have clicked on that link?

24 A. No.

25 Q. I would now -- did there come a time when you paid for

Klndtem2

1 this -- when you paid this invoice?

2 A. Yes.

3 Q. After receiving this invoice, did there come a time when
4 you did go to Mr. Teman's website?

5 A. Yes.

6 Q. And when was that?

7 A. It was later on, as we were negotiating the larger
8 agreement.

9 Q. So that was -- this is just an invoice for one device, is
10 that right?

11 A. Correct.

12 Q. When you received this invoice, what did you think that you
13 were buying with just this invoice?

14 A. Just that one device.

15 Q. OK. At the same time, were there conversations about other
16 purchases?

17 A. There were conversations.

18 Q. What were those conversations?

19 A. Discussions and negotiations about how to structure the
20 terms of the larger purchase.

21 Q. I'll direct your attention to Government Exhibit 414, and
22 there is an email message on the third page of that document.

23 A. Do I still need this binder?

24 Q. You don't need the binder.

25 In this message, Mr. Teman says: "Here is the form to

Klndtem2

1 complete the order for the 10 Version 2.0 devices you put into
2 PropertyPanel.xyz," and then he later includes a hyperlink.

3 What was Mr. Teman sending you?

4 A. He was sending me an online order form.

5 Q. And did you go to that link?

6 A. I believe so.

7 Q. And did there come a time after going to that link when you
8 saw so-called "Terms & Conditions" on Mr. Teman's website?

9 A. Yes.

10 Q. When did you first see those terms and conditions?

11 A. It must have been around the time of this email.

12 Q. What was your reaction to seeing them?

13 A. I was pretty surprised by many of them and felt that they
14 needed to be negotiated.

15 Q. What about them seemed surprising?

16 A. They seemed very one-sided and aggressive in nature.

17 Q. And at the time you saw those terms, did you feel that you
18 had been bound by them?

19 A. No.

20 Q. Did you feel you had agreed to those terms?

21 A. No.

22 Q. Why not?

23 MR. GELFAND: Your Honor, I object to the question
24 about the way he felt.

25 THE COURT: Sustained.

Klndtem2

1 Q. In your mind, were you bound by those terms?

2 A. No.

3 MR. GELFAND: The same objection.

4 THE COURT: Sustained.

5 Q. In your mind, did you agree to those terms?

6 MR. GELFAND: I am going to object, your Honor.

7 THE COURT: Sustained.

8 Q. Did there come a time when you expressed your views about
9 those terms and conditions to Mr. Teman?

10 A. Yes.

11 Q. And so going back to this document, I will direct your
12 attention to an email message at the bottom of the first page,
13 dated January 23, 2018. You wrote here: "Section 5K and 5L or
14 your terms and conditions are pretty brutal. I stopped reading
15 after I saw them. I don't usually get nitpicky but we need to
16 discuss these."

17 What were you telling Mr. Teman?

18 A. I was telling him that we needed to discuss the terms and
19 conditions.

20 Q. And was that a reference to a page on his website?

21 A. Yes.

22 Q. What did you mean, that they were pretty brutal?

23 A. I'd have to see them to remember it, but judging by my
24 language, they seemed one-sided and very aggressive.

25 Q. When you said that they were pretty brutal, were you

Klndtem2

1 conveying anything about whether you agreed to those terms?

2 A. My next sentence says that we need to discuss them, so I
3 meant we need to negotiate them.

4 Q. What was the date of that email to Mr. Teman?

5 A. January 23, 2018.

6 Q. And at that point Mr. Teman had installed a GateGuard
7 device at 518 West 204, right?

8 A. Yes.

9 Q. I'll direct your attention to an email above this one that
10 says -- let's pull it up. He wrote back: "Sure. Call me."

11 Did you have a subsequent call with Mr. Teman?

12 A. Yes.

13 Q. On that call, what, if anything, did Mr. Teman say about
14 payment terms?

15 A. I don't recall specifics about that conversation.

16 Q. On that conversation, did you commit to abiding by the
17 terms and conditions?

18 MR. GELFAND: Your Honor, objection. The witness has
19 testified he doesn't recall.

20 THE COURT: Overruled.

21 You may answer it.

22 THE WITNESS: Repeat the question.

23 BY MR. BHATIA:

24 Q. On that call that says, "Sure, call me," did you say
25 anything about committing to the terms and conditions?

Klndtem2

1 A. I don't think so, no.

2 THE COURT: Please speak louder.

3 THE WITNESS: Sure.

4 THE COURT: Just repeat the answer.

5 A. I don't think so, no.

6 Q. At any time did you have a phone call with Mr. Teman where
7 you told him you agreed to the terms and conditions?

8 A. No.

9 Q. So you didn't have one after this either?

10 A. No.

11 Q. OK. Did there come a time when you actually paid the
12 invoice for -- when you actually paid the invoice that you
13 testified about earlier today?

14 A. Yes.

15 Q. So I'll direct your attention now to Government Exhibit
16 146.

17 MR. BHATIA: Your Honor, at this point, I think we
18 need to offer that into evidence.

19 If I could have one moment?

20 One moment, your Honor.

21 (Pause)

22 MR. BHATIA: Your Honor, the government offers into
23 evidence, pursuant to a stipulation that we read off yesterday,
24 Exhibits 141 through 146.

25 THE COURT: Any objection?

Klndtem2

1 MR. GELFAND: No objection.

2 THE COURT: Those are all received.

3 (Government's Exhibits 141 through 146 received in
4 evidence)

5 BY MR. BHATIA:

6 Q. Mr. Gabay, I would like to direct your attention to
7 Government Exhibit 146. We'll put it up on the screen.

8 On the top right here is a check image, is that right?

9 A. Yes.

10 Q. Do you recognize this check?

11 THE COURT: Can you enlarge it, please, for the
12 benefit of the jury?

13 A. I do.

14 Q. And is this check issued by 518 West 204 LLC?

15 A. Yes, it is.

16 Q. Is this the check that you issued for the invoice that you
17 had received?

18 A. Yes.

19 Q. When you issued this check, what were you agreeing to do
20 with GateGuard? What were you agreeing to purchase from
21 GateGuard?

22 A. The intercom panel.

23 Q. Had you spoken on the phone with Mr. Teman about GateGuard?

24 A. I had.

25 Q. And you described meetings with GateGuard?

Klndtem2

1 A. Yes.

2 Q. During those phone calls and meetings, did Mr. Teman tell
3 you anything about authority to draw checks on behalf of 518
4 West 204 LLC?

5 A. No.

6 Q. Did he tell you anything about a ten-year commitment to
7 paying him monthly fees?

8 A. No.

9 Q. At the time you issued this check, had Mr. Teman told you
10 anything about paying a device removal fee if you removed the
11 device?

12 A. No.

13 Q. This check is dated January 31, 2018, is that right?

14 A. Yes.

15 Q. At the time you paid this check, had you -- did you believe
16 that you were buying a GateGuard intercom?

17 A. Did I what?

18 Q. Did you believe that you were purchasing and owning a
19 GateGuard intercom?

20 A. Yes.

21 Q. Did you believe that you would be subject to a fee if you
22 decided to remove the intercom and do something else?

23 A. No.

24 Q. At the time you issued this check, what commitments had you
25 made to GateGuard about future purchases?

Klndtem2

1 A. There were no commitments, there were just negotiations.

2 Q. At the time you issued this check, were you giving Mr. --
3 had you given Mr. Teman authority to draw checks from your
4 accounts?

5 A. No.

6 Q. If Mr. Teman had said I'd like authority to issue checks on
7 your behalf, why don't you give me a check, what would you have
8 said?

9 MR. GELFAND: Objection, your Honor. It calls for
10 speculation.

11 THE COURT: Overruled.

12 THE WITNESS: That means I can answer it?

13 THE COURT: You may answer it. Thank you.

14 A. I would have said no.

15 Q. Why would you have said no?

16 A. Because we don't authorize anyone to draw on our
17 accounts -- any of our vendors to draw funds from our accounts
18 other than specific categories, such as utilities or mortgages.

19 Q. So what are the categories where you do allow people to
20 draw funds?

21 A. Only mortgage payments or utilities.

22 Q. And why do you not let other people draw funds from your
23 accounts?

24 A. That's just the way our policy is structured. We like to
25 see invoices come in. We like to authorize each payment and go

Klndtem2

1 through our accounts payable process.

2 Q. Is there a practical effect -- is there a practical reason
3 you don't want people automatically drawing funds from that
4 account?

5 A. Practical reason? I don't understand what you mean.

6 Q. Is there a reason you want to manually approve expenses
7 going out of that account?

8 A. Yeah, to make sure that they are authorized.

9 Q. At the time you paid this check, did you have any contract
10 with Mr. Teman?

11 A. No.

12 Q. And at the time you issued this check, had you signed
13 anything called the terms and conditions?

14 A. No.

15 Q. After paying for this first device, did you have other
16 conversations with Mr. Teman about other purchases after paying
17 this?

18 A. Yes.

19 Q. What was the substance of those conversations?

20 A. It was negotiating the rollout of Version 2.0 across
21 multiple properties.

22 Q. I'll direct your attention to Government Exhibit 415, which
23 we will pull up on the screen for you.

24 I will direct your attention to an email at the bottom
25 of the first page.

Klndtem2

1 We can scroll up a little bit, and we can see this is
2 from -- this is a message from Ari Teman?

3 A. Yes.

4 Q. And it is an email to you?

5 A. Yes.

6 Q. And who is Yoni Irom?

7 A. That is an attorney.

8 Q. OK. In this message -- now go to the contents of it --
9 what was Mr. Teman sort of conveying to you?

10 THE COURT: Let's let the jury read the message first.

11 MR. BHATIA: OK.

12 (Pause)

13 THE COURT: OK. Go ahead.

14 BY MR. BHATIA:

15 Q. At this point, is Mr. Teman giving you a proposal?

16 A. He's directing me to fill out some sort of template to go
17 through the process of finalizing the order for the 20 -- for
18 the units for the 20 buildings.

19 Q. Now, if we go further up this page on this document, you
20 send a message to Mr. Teman, and in that message you write --
21 and now we have it up here -- you write: "Proposed changes to
22 terms and conditions attached. Let's discuss once you've had a
23 chance to review."

24 What were you sending Mr. Teman?

25 A. Red lines terms and conditions.

Klndtem2

1 Q. So let's turn to page 3 of this document.

2 These are the same terms and conditions that you
3 described as pretty brutal earlier?

4 A. Yes.

5 Q. So on page 3 of this document -- if we pull it up. You can
6 zoom in on the text on this page.

7 Can you read the top three lines?

8 A. "Terms & conditions, GateGuard Inc. Last revised:
9 November 30, 2017, 3:30 p.m."

10 Q. Are these the terms and conditions that you had seen
11 before?

12 A. I believe so.

13 Q. And where did you get this document from?

14 A. From his website.

15 Q. And what you are sending him, is that like a Microsoft Word
16 document?

17 A. Yes.

18 Q. Did you send it with any edits in this document?

19 A. I did.

20 Q. When you sent it to him, why did you make edits?

21 A. Because I felt the terms and conditions were brutal.

22 Q. And did you believe that these terms and conditions had any
23 effect on the intercom that you had already purchased?

24 A. Had any effect?

25 Q. Were these terms and conditions related to that earlier

Klndtem2

1 intercom?

2 A. I didn't think so, no.

3 Q. What intercoms might these terms and conditions relate to?

4 A. The ones that we were negotiating to purchase.

5 Q. Turn your attention now to the seventh page of this
6 document, and I will direct your attention to a paragraph right
7 under the heading 5.

8 Pull it up.

9 Fair to say this is a long document?

10 A. Yes.

11 Q. OK. So this section is called "Orders and Fees," right?

12 A. Yes.

13 Q. And, in quotes, "Pricing"?

14 A. Yes.

15 Q. You made two edits here, right?

16 A. I did.

17 Q. What is the edit -- the second edit further down this page,
18 you struck some language. We don't need to get into legalese,
19 but what would you say that you were striking out here?

20 A. I was striking out the language that enabled GateGuard to
21 increase pricing at a rate of 100 percent per year.

22 Q. Was that an unusual provision for you?

23 A. Highly unusual.

24 Q. Why? Why did you think that might be an issue?

25 A. I think it would be an issue if pricing can be doubled on

Klndtem2

1 an annual basis at his discretion.

2 Q. Further up this page, there is a URL. Do you see that URL?

3 A. I do.

4 Q. And did you click on that link?

5 A. I don't recall.

6 Q. Do you recall ever seeing another Web page that had similar
7 conditions?

8 A. Similar conditions to what?

9 Q. Do you recall ever seeing another page like a Terms &
10 Conditions?

11 A. No.

12 Q. OK. To the best of your memory, did Mr. Teman ever draw
13 your attention to that website?

14 A. No.

15 Q. And to the best of your memory, did he ever send you a copy
16 of that website?

17 A. A copy of the website?

18 Q. Did he ever send you the text of what's in that link?

19 A. No, I don't think so.

20 Q. By sending back these terms and conditions, were you
21 agreeing to them?

22 A. No. It was a negotiation.

23 Q. You would say this is mid-negotiation, right?

24 A. Yes.

25 Q. Going back to your email now, so that is page 1 of this

Klndtem2

1 document, towards the top.

2 (Pause)

3 THE COURT: Do you need to put it up on the screen.

4 MR. BHATIA: We will play it.

5 Q. In this email where you attached these terms and
6 conditions, you wrote: "Proposed changes to terms and
7 conditions attached. Let's discuss once you've had a chance to
8 review."

9 By saying you wanted to discuss, were you conveying
10 anything about whether you had already agreed to these
11 conditions?

12 A. No.

13 Q. What did you mean to tell Mr. Teman about the terms?

14 A. That I had proposed some changes and we should discuss
15 further.

16 Q. And you didn't agree to them as is?

17 A. Absolutely not.

18 Q. Did you hear from Mr. Teman after you sent this email?

19 A. I believe we spoke, yes, and I think in response to some of
20 my comments.

21 Q. You continued to talk to Mr. Teman about the GateGuard --
22 about buying more GateGuard product, is that right?

23 A. I did.

24 Q. Did there come a time when you decided that you did not
25 want to purchase more GateGuard intercoms?

Klndtem2

1 A. Yes.

2 Q. What led you to that conclusion?

3 A. We were having some challenges with the unit that had been
4 installed, and during the troubleshooting process I
5 communicated with Mr. Teman that until some of these issues
6 were resolved, we'd like to put a hold on any further
7 discussions on the larger order.

8 Q. Let's just take a step back.

9 You said that you had some issues with the device.
10 What kind of issues?

11 A. Connection issues. We got some feedback from tenants that
12 either felt like they weren't able to get in when they needed
13 to get in or weren't able to buzz people in when they needed to
14 buzz people in. The last piece which I remember was that there
15 was a connectivity issue where the unit wasn't working as
16 promised.

17 Q. How many times a day would you say an intercom is used in
18 one of your buildings?

19 A. It depends on the size of the building.

20 Q. If there were ten tenants in the building, how many times a
21 day do you think the intercom would be used?

22 A. It would be tough to say. It depends on how many guests
23 they have and so many other factors.

24 Q. It could be dozens of times?

25 A. Yes.

Klndtem2

1 Q. So is it a problem for you if the intercom is not working
2 properly?

3 A. Yes, it is.

4 Q. And did tenants complain to you?

5 A. Yes.

6 Q. And did you relay complaints to Mr. Teman?

7 A. Yes.

8 Q. What did he say in response to those complaints?

9 A. He worked on the issues that were coming up, and we worked
10 together in order to resolve them.

11 Q. Did you find that despite his work, there were still
12 problems coming up?

13 A. Yes.

14 Q. And ultimately what happened to your discussions about
15 buying more GateGuard intercoms?

16 A. When I relayed the intention to put the larger order on
17 hold, I got a very nasty email from Mr. Teman and the
18 relationship deteriorated after that.

19 Q. I would like to direct your attention to Government Exhibit
20 416. And at the top of this page, there is a message between
21 you and Mr. Teman.

22 You wrote: "Updated feedback on my end below.

23 "'Given all of the issues we are having with Teman's
24 system, I am very hesitant to move forward with him. I think
25 we need to put this entire project on hold. And wait.'"

Klndtem2

1 What were you relaying to Mr. Teman?

2 A. I was relaying to him that due to the challenges and the
3 issues that we had with the system, we would be suspending any
4 further discussion about the larger order until they were
5 resolved.

6 Q. You are describing feedback on your end and then quoting
7 some language. Are you quoting someone else here?

8 A. Just probably quoting just the general feedback that I'm
9 getting.

10 Q. So in the office there was a conclusion to put this on
11 hold?

12 A. Yeah.

13 Q. It was not just your decision?

14 A. No.

15 Q. After --

16 THE COURT: Counsel, I am looking for a good moment
17 for a mid-morning break. Is this it, or would you like to go
18 on a little longer?

19 MR. BHATIA: I have a few more questions on this top.

20 THE COURT: Very good.

21 MR. BHATIA: And then I will let you know.

22 THE COURT: Keep going.

23 BY MR. BHATIA:

24 Q. Did you ever -- after saying that you were hesitant to move
25 forward, did you ever buy any intercoms?

Klndtem2

1 A. Did I ever?

2 Q. After sending this message, did you buy any other
3 intercoms -- intercoms from Mr. Teman?

4 A. No.

5 Q. OK. Did you buy anything else from Mr. Teman?

6 A. No.

7 MR. BHATIA: Your Honor, this might be a good point
8 for a break.

9 THE COURT: All right. Ladies and gentlemen, we're
10 going to take our mid-morning break. Mr. Smallman will come
11 get you in 15 minutes.

12 Enjoy your break and, as always, do not discuss the
13 case.

14 (Continued on next page)

Klndtem2

(Jury not present)

THE COURT: All right. The witness may step down.

Counsel, anything to raise before we take our break?

MR. BHATIA: No, your Honor.

THE COURT: All right. I will see you just before the jury comes back. Thank you. Have a good break.

(Recess)

(Jury not present)

THE COURT: All right. Let's get the witness and the jury.

Government counsel, so that I don't have to keep reminding the witness, do encourage him to speak up. He speaks very softly.

And government counsel, to the extent that -- there you go, here he is. Please repeatedly just keep your voice up and speak right into the mic.

May I just suggest to the government table, given the size of some of the type on some of the documents, so that I don't have to keep interjecting, as a general matter, let's blow up the relevant language so the jury can see it without straining. Thank you.

MR. BHATIA: Understood.

(Continued on next page)

Klndtem2

(Jury present)

THE COURT: All right. Welcome back, ladies and gentlemen.

Please be seated.

Mr. Gabay, I will remind you that you are still under oath.

And, counsel, you may inquire.

BY MR. BHATIA:

Q. Mr. Gabay, to be clear, were there problems with the one GateGuard device that you owned?

A. Yes.

Q. There were problems with the one at 518 West 204?

A. Yes.

Q. What were those problems?

A. We were having issues connecting. There were a variety of issues with getting tenants to use it properly or get it to run the way we needed it to run.

Q. Did the tenants seem upset about it?

A. They did.

Q. And they were relaying those concerns to you?

A. Yes.

Q. And having a faulty intercom, does that also lead to getting complaints with the city?

A. Yes.

Q. It can be a big problem for you, is that right?

Klndtem2

1 A. Yes.

2 Q. And did you relay those concerns to Mr. Teman?

3 A. I did.

4 Q. These were reoccurring problems, is that right?

5 A. Yes.

6 Q. Ultimately, was he able to stop the problems from
7 reoccurring?

8 A. Many of them were taken care of. The connectivity issues
9 were still not resolved.

10 Q. Connectivity means the ability of the intercom -- the
11 ability of the intercom to connect to the Internet?

12 A. Yes, and for us to connect to the intercom remotely to
13 update or --

14 Q. Is that the main purpose of the intercom, as far as you can
15 tell?

16 A. No, that's not the main purpose.

17 Q. Is it an important part of the product?

18 A. Yes.

19 Q. And it wasn't working?

20 A. Correct.

21 Q. And you told Mr. Teman, right?

22 A. Yes.

23 Q. And you said -- you kept having these problems?

24 A. Yes.

25 Q. Would you describe yourself as a satisfied customer?

Klndtem2

1 A. No.

2 Q. Did there come a time after the first device when you
3 bought more of them?

4 A. No.

5 Q. Why not?

6 A. Because we weren't happy with the first one.

7 Q. You sent over -- you testified about some edits you made to
8 the terms and conditions.

9 A. Yes.

10 Q. As part of your negotiations, right?

11 A. Yes.

12 Q. And at the time -- at any time, did you ever have an
13 agreement with Mr. Teman?

14 A. About what?

15 Q. About these terms and conditions.

16 A. No.

17 Q. Did you ever have any agreement about purchasing more
18 devices?

19 A. No.

20 Q. Did you feel that you had any agreement -- excuse me.

21 Did you have any agreement beyond buying the one
22 device that you paid for?

23 MR. GELFAND: Objection, your Honor.

24 THE COURT: One moment.

25 (Pause)

Klndtem2

1 THE COURT: Overruled.

2 You may answer.

3 THE WITNESS: Can you repeat the question?

4 BY MR. BHATIA:

5 Q. Did you have any agreement with Mr. Teman other than paying
6 for the one device that you owned and the invoice that you
7 received?

8 A. No.

9 THE COURT: Wait. Just to be more precise, is the
10 question other than in connection with the first intercom, did
11 he have any agreement with Mr. Teman? Is that the question?

12 That's the way I understood what you were asking, but
13 I want to make sure there is clarity in your question.

14 MR. BHATIA: I mean other than -- let me rephrase the
15 question.

16 THE COURT: Thank you.

17 Q. Mr. Teman installed one intercom in one of your buildings,
18 right?

19 A. Correct.

20 Q. And you paid \$3,600 for that intercom?

21 A. Correct.

22 Q. Did you have any agreement with Mr. Teman beyond him
23 installing the device and you paying \$3,600 for that device?

24 A. No.

25 Q. Did you have any agreement called Terms & Conditions?

Klndtem2

1 A. No.

2 Q. Did you have any written signature with both of your
3 signatures at the bottom?

4 A. No.

5 Q. Did Mr. Teman at any time, ever, tell you about fees for
6 removing that device?

7 A. Yes, after -- once the relationship deteriorated, he
8 started sending me emails about these fees that I supposedly
9 owed him.

10 Q. Prior to when the relationship deteriorated, when you put
11 that -- is that after you decided to put the negotiations on
12 hold?

13 A. Yes.

14 Q. Prior to that, had Mr. Teman ever told you about a fee for
15 removing a device from your own building?

16 A. Not that I recall.

17 Q. You thought you owned the device -- you owned the device,
18 right?

19 A. Well, it was a temporary device that we owned until the new
20 one would come in.

21 Q. Does it make sense to you to pay a fee to remove your own
22 device from your own building?

23 A. No.

24 Q. Is that something that would have stood out to you if you
25 had agreed to pay that fee?

Klndtem2

1 A. Yes.

2 Q. Did Mr. Teman ever direct your attention to language that
3 said you had to pay a fee to remove a device?

4 A. No.

5 Q. If you had seen that language, would that have stood out to
6 you?

7 A. Yes.

8 Q. And if you had seen language that said you were committing
9 to paying a fee for removing the device, what would you have
10 done?

11 MR. GELFAND: Objection, your Honor. It calls for
12 speculation. The same objection as earlier.

13 THE COURT: Yes. Sustained.

14 (Pause)

15 No. Overruled. I am going to reverse on that.

16 The witness may answer.

17 BY MR. BHATIA:

18 Q. You can answer, Mr. Gabay.

19 A. Repeat the question, please.

20 Q. If you had seen something that said by buying the one
21 intercom for \$3,600, you would be paying a cancellation fee or
22 a device removal fee, what would you have done?

23 A. I would have removed that language.

24 Q. Would you have spoken to Mr. Teman about it?

25 A. Absolutely.

Klndtem2

1 Q. Would you have told him that you didn't agree to that?

2 A. Yes.

3 Q. You don't remember ever seeing that language?

4 A. No.

5 Q. You never saw that language?

6 A. That's correct.

7 Q. Before the break, we spoke about -- you saw an email where
8 you decided to put the negotiations on hold, right?

9 A. Yes.

10 Q. And how did Mr. Teman react to that?

11 A. He sent a very nasty and aggressive email saying -- I don't
12 remember the exact words, but it was kind of unpleasant after
13 that.

14 Q. When you sent him that message, were you saying that we're
15 never going to do business with you again, or were you
16 conveying that we just need to take some time?

17 A. We just need to take some time.

18 (Continued on next page)

K1NVTEM3

Gabay - direct

1 BY MR. BHATIA:

2 Q. And is that because of the issues that you were having with
3 the first device?

4 A. Yes.

5 MR. BHATIA: Mr. Magliocco, can we please publish
6 Government Exhibit 417.

7 Q. And, in particular, I'll direct your attention to an email
8 at the bottom of page 2, which we can blow up, which we'll blow
9 up for you.

10 This is your email that you previously spoke about,
11 right? This is where you said updated feedback below, and you
12 told him to put the project on hold?

13 A. Yes.

14 Q. Okay. Now, going to page 1 of this document, in response
15 to that, Mr. Teman sent you a message. And we'll take a look
16 at the -- we can blow up the whole email.

17 He sent this to you on the same day, right? This is
18 from April 26th, 2019?

19 THE COURT: Counsel, you said April 26?

20 A. I don't see --

21 THE COURT: One moment.

22 MR. BHATIA: March 26, I'm sorry.

23 A. Yes.

24 Q. It's from March 26. This is a message from Ari Teman to
25 you?

K1NVTEM3

Gabay - direct

1 A. Yes.

2 Q. And is this the response he had that you thought was
3 unusual?

4 A. Yes.

5 Q. Here he's saying: I'm going to sue you for -- I'll direct
6 your attention to this. This is the very last line of the
7 email. He says: I'm going to sue --

8 THE COURT: Sorry. Do you want to take a moment and
9 let the jury read the email?

10 MR. BHATIA: Sure.

11 (Pause)

12 THE COURT: While the jury is reading the email, can I
13 briefly see counsel at the sidebar? And I'll ask the witness
14 to step down please.

15 (Continued on next page)

K1NVTEM3

Gabay - direct

1 (At sidebar)

2 THE COURT: There is an extraordinary amount of
3 leading going on. The questions are almost repeatedly leading
4 and not close. In the absence of an objection, I'll permit
5 them to stand; they facilitate the examination and the
6 examination moves more quickly.

7 I did want to spot the issue, though, because the
8 amount of leading is really unusual. Please, do your best,
9 certainly if there is an objection, to abide by the rules about
10 leading questions. You're consistently putting the answer in
11 the witness's mouth in the form of a question.

12 Mr. Gelfand, I take it that the defense is not
13 objecting to that for strategic reasons to let this move along.

14 MR. GELFAND: Yes, your Honor. And when it comes to
15 things like background info, I tend to just ignore the form
16 issues.

17 THE COURT: That's fine.

18 MR. GELFAND: When it comes to more substantive
19 things, we'll certainly object.

20 THE COURT: That's fine.

21 As to the presentation of exhibits to the jury, if
22 you're putting an email in front of the jury that involves the
23 exchange between the witness and the defendant, so as not to
24 frustrate the jury, I think you need to give them the time to
25 at least absorb the email before zipping right to a portion

K1NVTEM3

Gabay - direct

1 towards the back end. Otherwise, it's very hard for them to
2 understand the context of what's being asked about.

3 MR. BHATIA: I understand.

4 THE COURT: All right. Thank you.

5 (Continued on next page)

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K1NVTEM3

Gabay - direct

1 (In open court)

2 THE COURT: You may proceed.

3 BY MR. BHATIA:

4 Q. Mr. Gabay, in the second paragraph here, you wrote --

5 Mr. Teman wrote: You promised to not judge us based on the old
6 device, which I didn't want to install for you because it
7 relies on internet. And you have Spectrum that always goes
8 offline.

9 What's he referring to there?

10 A. He's referring to the device that was installed at 518 West
11 204th Street.

12 Q. Did you ever make any -- what promises, if any, did you
13 make to Mr. Teman regarding evaluating him for future purchase?

14 A. I don't recall making any promises about anything.

15 Q. And now going further down this page, in the last paragraph
16 he writes: Your manager is an idiot and your internet has been
17 off for days. As I said and as your super told him, I cannot
18 fix your manager being an idiot, but that's not my problem. My
19 problem is you do not keep your end of contracts. You waste my
20 time, you make false promises. This is why they invented
21 attorneys. I'm done with you. Pay the bill before you try to
22 talk or it goes to my attorneys. I'm also going to sue you for
23 interrupting my business for the last two months with your
24 lies.

25 He mentions in here keeping you under contracts.

K1NVTEM3

Gabay - direct

1 Do you have a contract with Mr. Teman?

2 A. No.

3 Q. Did you have any idea what contract he was referring to?

4 A. No.

5 Q. And he references false promises. Had you made any
6 promises to Mr. Teman?

7 A. Not that I can recall, no.

8 Q. He says here too: This is why they invented attorneys.
9 What do you think -- how did you interpret that?

10 MR. GELFAND: Objection, your Honor.

11 THE COURT: Sustained.

12 Q. What did it mean to you when he wrote, This is why they
13 invented attorneys?

14 MR. GELFAND: Your Honor, same objection.

15 THE COURT: Sustained.

16 Q. Mr. Teman wrote: I'm going to sue you for interrupting my
17 business for the last two months with your lies. Had he ever
18 spoken to you about a lawsuit before?

19 A. No.

20 Q. Do you take this as him threatening to sue you?

21 A. Threatening some sort of legal action.

22 Q. After this email, were there other times when Mr. Teman
23 threatened you?

24 A. I believe so.

25 Q. Were those on the phone or in email?

K1NVTEM3

Gabay - direct

1 A. There are some other emails that I received from him which
2 did have some other threats about placing liens, and I can't
3 remember exactly what else.

4 Q. And going back to the document that's Government Exhibit
5 417. At the top of this page and in the first sentence, we'll
6 pull it up, Mr. Teman here writes: Please pay the full invoice
7 for the GateGuard device you got 100 percent bad faith
8 immediately before we release anything further.

9 Does he attach an invoice here to this email?

10 A. Yeah, it shows that there's an attachment.

11 Q. Had you already paid the invoice that you agreed to pay for
12 the one device?

13 A. Yes.

14 Q. This is a different invoice?

15 A. It's got a different invoice number, yeah.

16 THE COURT: Sorry. Louder, please.

17 A. It's got a different invoice number.

18 Q. I'll direct your attention to page 9 of this document which
19 shows the invoice. This is the invoice that you received on
20 March 26th after sending him the email about putting your
21 project on hold?

22 A. Yes.

23 Q. This is a different invoice, right?

24 A. Different than what?

25 Q. This is not the same as the \$3,600 invoice?

K1NVTEM3

Gabay - direct

1 A. No, it's not.

2 Q. What's the balance due for this invoice?

3 A. \$18,286.

4 Q. Had you agreed to pay that value of money to Mr. Teman?

5 A. No.

6 Q. If we can go through now and look at the items listed in
7 the invoice. It's listed here, GateGuard Version 1 panel. And
8 the unit cost is now \$14,999.

9 Had you agreed to pay that amount for the GateGuard
10 panels?

11 A. No.

12 Q. And you had only at that point purchased one panel?

13 A. Correct.

14 Q. Did you ever buy another panel?

15 A. No.

16 Q. And here there's also a -- it looks like it says:
17 Installation wired basement Version 1. And it lists a cost of
18 \$1,499. Had you agreed to pay \$1,499 for installation?

19 A. I don't know what the original \$3600 included, what the
20 cost was for installation. But, no, not like this.

21 Q. You don't remember paying, on top of \$15,000, another \$1500
22 for installation?

23 MR. GELFAND: Objection, your Honor. Leading.

24 THE COURT: One moment.

25 Sustained.

K1NVTEM3

Gabay - direct

1 Q. There's listed here, as well, a monthly service. And it
2 says: First year up front. And it lists the value of -- the
3 unit cost of \$149, quantity of 12, and a total of \$1,788.

4 Had you agreed to pay that amount of money to
5 Mr. Teman for monthly service?

6 A. No.

7 Q. After this invoice in this email, this was the day you
8 initially put the project on hold; is that right?

9 A. I believe so.

10 Q. Did there ever come a time when Mr. Teman threatened to
11 place a lien on one of your buildings?

12 A. Yes.

13 Q. I'd like to direct your attention to Government Exhibit
14 418, which we'll pull up for you. And in particular, I'd like
15 to direct your attention to the second-to-last paragraph. Why
16 don't we take a look at the second-to-last paragraph.

17 This is an email from Mr. Teman to you and to others.

18 He says: Take this to your father-in-law or whoever
19 is the adult supervision, and explain that if your end of the
20 contract isn't upheld, we're putting a lien on your building
21 tomorrow. You will never get the opportunity to invest in our
22 company, but you sure as hell will pay your bill -- pay you
23 bill.

24 He references a lien in this message, right?

25 A. Yes.

K1NVTEM3

Gabay - direct

1 Q. What's a lien?

2 A. A lien is -- I don't know the legal explanation, but a lien
3 is some sort of monetary claim that can be placed against the
4 ownership of a property.

5 Q. Is a lien something that signals someone owes you money or
6 you owe someone money?

7 A. You owe someone money.

8 Q. It's something that if someone believes you owe money, they
9 can try to put on one of your buildings?

10 A. That's correct.

11 Q. Is it a significant problem, as someone who manages
12 properties?

13 A. It is a problem if you have a lien other than the bank on
14 your property.

15 Q. As far as you know, did he ever actually place a lien on
16 your buildings?

17 A. Not as far as I know.

18 Q. It was referenced in this email, but as far as you know, it
19 wasn't actually done?

20 A. That's correct.

21 Q. Now, at any time did Mr. Teman ever say that he would issue
22 checks against Coney Management's accounts if it did not pay
23 this invoice?

24 A. No.

25 Q. At any point did Mr. Teman ever ask permission to pay

K1NVTEM3

Gabay - direct

1 himself by issuing checks from Coney's bank accounts?

2 A. No.

3 Q. And if he had asked your permission to do that, to write
4 checks from your accounts to himself, what would you have said?

5 A. I would have said no.

6 Q. Why is that?

7 A. Because we don't allow other people to write checks on our
8 accounts.

9 Q. Turning now -- this email is dated March 18, 2018, right?

10 A. March 27th.

11 Q. March 27th, that's right.

12 How did your relationship with Mr. Teman continue
13 throughout 2018?

14 A. Continued to deteriorate and nonexistent.

15 Q. What do you mean deteriorate?

16 A. I was getting emails like this and found no reason to
17 continue dealing with him.

18 Q. I want to understand what was in your head throughout 2018.
19 Would you describe them as threatening or some other way?

20 A. Definitely threatening, yes.

21 Q. And that happened throughout 2018?

22 A. There were few different emails and claims from Mr. Teman
23 and his attorney.

24 Q. At any point did you ever purchase more intercoms?

25 A. No.

K1NVTEM3

Gabay - direct

1 Q. Did you ever tell him, after he put the project on hold,
2 that you wanted to buy more intercoms?

3 A. No.

4 Q. Mr. Gabay, I'd like to direct your attention to April 2019.
5 Did there come a time when you learned about certain activity
6 in the 518 West 204 bank account?

7 A. Yes.

8 Q. And did that activity involve checks that you had not
9 authorized?

10 A. Yes.

11 Q. How did you learn about those checks?

12 A. We were notified by our bank that a check had been
13 presented. And they contacted us to verify whether it was
14 authorized.

15 Q. Did they send you a picture of that check?

16 A. Yes.

17 MR. BHATIA: Mr. Magliocco, if we could publish
18 Government Exhibit 201. And we'll pull up a check image at the
19 top of this page.

20 Q. When did you first see this check?

21 A. Some time in March or April of 2019, I don't remember the
22 exact date.

23 Q. What was your reaction to seeing it?

24 A. I was surprised and I was upset.

25 Q. What about it surprised you?

K1NVTEM3

Gabay - direct

1 A. I was surprised that somebody would attempt to write up
2 their own check and draw it up from our account.

3 Q. Had you ever authorized this check?

4 A. No.

5 Q. Did you agree that -- had you agreed that any particular
6 person could deposit this check?

7 A. No.

8 Q. Did you or anyone else at Coney Management authorized this
9 check?

10 A. No.

11 Q. Are you familiar with checks issued from this account?

12 A. Other checks?

13 Q. Other checks.

14 A. Yes.

15 Q. You've seen them as part of your day-to-day
16 responsibilities?

17 A. Yes.

18 Q. And how do those checks compare -- we'll go into detail,
19 but as a general matter, how do those checks compare to this
20 check?

21 A. They look completely different in their format and layout
22 and text.

23 Q. And starting at the top left part of this check image, how
24 does the name listed as 518 West 205 LLC compare to what's on
25 your checks?

K1NVTEM3

Gabay - direct

1 A. 518 West 205 LLC is not an entity that we operate.

2 Q. Is there one that you operate with a similar name?

3 A. 518 West 204 LLC.

4 Q. 204 versus 205?

5 A. Correct.

6 Q. And this check says care of Coney Realty, right?

7 A. That's correct.

8 Q. What's the association with being Coney Realty and 518 West
9 205 LLC?

10 A. There is no association.

11 Q. Is there an association between another Coney entity and
12 518 West 205 -- West 204?

13 A. Yes, Coney Management.

14 Q. Coney Management oversees West 204, right?

15 A. Yes.

16 Q. Not Coney Realty?

17 A. Correct.

18 Q. In addition, if you go to the bottom now right corner of
19 this check, it has what looks like maybe a signature. Is that
20 any signature -- are you familiar with -- you said you're
21 familiar with other checks from this account?

22 A. I am.

23 Q. You've seen the other checks from other people who write
24 from that account?

25 A. No other people write checks from this account, just our

K1NVTEM3

Gabay - direct

1 office.

2 Q. Does that signature appear to be any of the -- does that
3 signature appear like any of the people who write checks from
4 your account?

5 A. No.

6 Q. Further below it says: "Draw per contract, no signature
7 required." Is that language that appears on the checks that
8 you issue from your account?

9 A. No.

10 Q. It says: "Draw per contract." Did you have a contract
11 with Mr. Teman?

12 A. No.

13 Q. In the memo line it says: "Device removal fee." Prior
14 to -- before seeing this check, had you ever heard of a device
15 removal fee?

16 A. In his emails to me.

17 Q. In his emails to you after -- was that after the
18 relationship deteriorated?

19 A. Yes.

20 Q. Had you ever told him -- had you ever given him authority
21 to draw -- to pay a device removal fee?

22 A. No.

23 Q. Had you authorized anyone from your company to pay a device
24 removal fee?

25 A. No.

K1NVTEM3

Gabay - direct

1 Q. Had you told Mr. Teman that he was authorized to draw a
2 check for a device removal fee?

3 A. No.

4 Q. Prior to seeing this check, what conversations, if any, did
5 you have with the defendant in which he said that he was
6 authorized to draw this check?

7 A. We didn't have any conversations authorizing him to draw
8 checks from the account.

9 Q. If you had a conversation where Mr. Teman had told you, I'm
10 authorized to draw a check from your account, would that have
11 stood out in your memory?

12 A. Yes.

13 Q. Why would that have stood out?

14 A. Because we don't allow vendors outside of specific ones to
15 draw funds from our account, to draw any sort of funds or make
16 checks from our account.

17 Q. If he had told you in an email that he had the authority to
18 draw checks from your account, would that have stood out in
19 your mind?

20 A. Yes.

21 Q. And what would you have said -- what would you have done in
22 response to seeing that in an email?

23 A. I would have told him that he was unauthorized.

24 Q. Did you learn about additional checks from the same
25 account?

K1NVTEM3

Gabay - direct

1 A. Yes.

2 Q. I should say this one is dated March 28th, 2019; is that
3 right?

4 A. Yes.

5 Q. And so did you learn about additional checks after March
6 28th, 2019?

7 A. Yes.

8 Q. How did you learn about those checks?

9 A. We were notified by our bank that additional checks had
10 been presented to be cashed on this account.

11 Q. For the March 2018 checks, what did you tell your bank --
12 now I'm going back to the March ones. In the March 2019
13 checks, I should say, what did you tell your bank about --

14 THE COURT: One moment, counsel. I think you said the
15 March 2018 checks. Are you referring to this check that's on
16 the screen or something else?

17 MR. BHATIA: Let me rephrase that. I'm referring to
18 this check.

19 THE COURT: That's 2019.

20 Q. March 2019. What did you tell your bank with regards to
21 this check?

22 A. That it was unauthorized.

23 Q. And why did you tell your bank that?

24 A. Because it was unauthorized.

25 Q. And what did your bank do in response to that?

K1NVTEM3

Gabay - direct

1 A. They declined to cash it from whoever presented it; and
2 instructed us that since fraud -- fraudulent activity was on
3 the account, they instructed us to close the account. Or they
4 actually closed the account.

5 Q. As far as you know, they did close the account?

6 A. Yes.

7 Q. So someone would not be able to draw checks on that account
8 in the future?

9 A. That's correct.

10 Q. Did there come a time when you learned that someone did try
11 to draw checks from that account?

12 A. Yes.

13 Q. How did you hear about that?

14 A. Also we were notified by the bank that additional checks
15 were attempting to be cashed from this account.

16 Q. Did they send you any images of those checks?

17 A. Yes.

18 Q. I'd like to direct your attention to Government Exhibit 203
19 which we'll pull up on the screen.

20 By way of example, let's look at the first page of
21 this document. Is this a check image that your bank had given
22 to you?

23 A. Yes.

24 Q. And is this also drawn from the 518 -- it lists here 518
25 West 205 LLC?

K1NVTEM3

Gabay - direct

1 A. Yes.

2 Q. That's not an entity associated with Coney at all, right?

3 A. That's correct.

4 Q. That would be 518 West 204 LLC?

5 A. That's right.

6 Q. And this check looks a little different; is that right?

7 A. Yes.

8 Q. It says: "Draw per contract. No signature required." Is
9 that right?

10 A. Yes.

11 Q. And below that it says: "This is a valid check. You are
12 required by law to honor it." It says: "Contract at
13 gateguard.xyz/legal/terms.php accepted by above client."

14 Had you accepted that contract?

15 A. No.

16 Q. Did you have any contract with Mr. Teman?

17 A. No.

18 Q. It says: "Contact us at 212-203-3714 with questions."

19 Is that your phone number?

20 A. No, it's not.

21 Q. Do you know whose phone number that is?

22 A. I don't know offhand.

23 Q. In the bottom left corner of this is what's called a
24 chargeback fee. Do you see that?

25 A. Yes.

K1NVTEM3

Gabay - direct

1 Q. Prior to this check, had you ever heard of a chargeback
2 fee?

3 A. No.

4 Q. Had you ever agreed to pay a chargeback fee?

5 A. No.

6 Q. The check at the bottom lists a bank number -- sorry, a
7 routing number and account number. Are those numbers that come
8 back to the 518 West 204 LLC account?

9 A. I would assume so.

10 Q. That's how checks would get to that account, right?

11 A. Correct.

12 Q. Had you ever given Mr. Teman your bank account number or
13 bank routing number?

14 A. No.

15 Q. Did he ever ask you for a form that would give it to you?

16 A. No.

17 Q. In which you would give to him?

18 A. No.

19 Q. If he had asked you for a form authorizing withdrawals from
20 your bank account, how would you have reacted?

21 A. He did ask and we said no.

22 Q. Why did you say no?

23 A. Because it's not the way we operate. We only do things by
24 invoice where we issue the check. He had requested that we
25 enter an order using a CH, and we asked him for invoices only.

K1NVTEM3

Gabay - direct

1 Q. You mentioned that you do business via invoice. Why do you
2 do business via invoice?

3 A. We feel that it allows for better records and checks and
4 balances, and it's just the way we've decided to run our
5 business process.

6 Q. What does it mean that you require an invoice?

7 A. If somebody wants to get paid, they have to send us an
8 invoice. When they send us an invoice, we write out a check.

9 Q. Do you receive an invoice -- so that happens with other
10 vendors, right?

11 A. That happens with all vendors.

12 Q. And with people who need to get paid by Coney Management,
13 right?

14 A. Correct.

15 Q. And in some cases, do you have contracts with those people?

16 A. In some cases, yes.

17 Q. And in the cases where you have a contract with them, do
18 they still send you an invoice?

19 A. Yes.

20 Q. Why is that?

21 A. Because a contract is a contract. And there is an invoice
22 which has an invoice number, sometimes there are payment terms.
23 So there will be an initial payment, and then a subsequent
24 invoice for a first installment or and monthly payment or
25 something like that.

K1NVTEM3

Gabay - direct

1 Q. Do you ever just pay because -- do you pay expenses because
2 they are identified in an invoice -- in a contract alone?

3 A. No.

4 Q. You need an invoice as well?

5 A. Correct.

6 Q. Did you authorize anyone to deposit this check shown here
7 in Exhibit 203?

8 A. No.

9 Q. You can flip through in the binder there. There are other
10 checks in Exhibit 203. Did you authorize any of those? Take a
11 look and that will be my question.

12 A. No, I didn't authorize these.

13 Q. In fact, at the time of these checks, that's April 19th,
14 2019, was this bank account open?

15 A. I don't believe it was.

16 Q. Why had it been closed?

17 A. Because we had received notification that a fraudulent
18 check had been created and cashed against the account.

19 Q. The date on those checks is April 19th, 2019?

20 A. That's correct.

21 Q. Do you observe a holiday that began on that date?

22 A. I do.

23 Q. What holiday?

24 A. Passover.

25 Q. And had you spoken with Mr. Teman in the past about your

K1NVTEM3

Gabay - direct

1 observance of religious holidays?

2 A. No, I don't think so.

3 Q. That's a formal way of saying you and Mr. Teman talked
4 about some of the Jewish holidays; is that right?

5 MR. GELFAND: Objection. Leading.

6 THE COURT: The witness said no. Next question.

7 Q. When you observed --

8 THE COURT: Sorry. The witness said, No, I don't
9 think so. So it assumes a fact not in evidence.

10 Next question.

11 Q. When you observe this holiday, what is your practice with
12 respect to electronic communications?

13 MR. GELFAND: Objection. Relevance, your Honor. 403.
14 Object to relevance and 403.

15 THE COURT: Overruled.

16 THE WITNESS: Answer?

17 THE COURT: You may answer.

18 A. For the first two days and the last two days of the
19 holiday, I am completely disconnected from any electronics and
20 don't use them.

21 Q. And this check was deposited on that first day of that
22 holiday?

23 A. No, this check was deposited on the eve of that holiday.

24 Q. So for the next two days, you wouldn't be accessing your
25 electronic devices?

K1NVTEM3

Gabay - direct

1 A. Correct.

2 Q. Do other people in your office observe that holiday?

3 A. Yes.

4 Q. Do they have similar practices?

5 A. Yes.

6 Q. When you were a customer of Sublet Spy or GateGuard, did
7 you meet with Mr. Teman in person?

8 A. I met with him in person, yes.

9 Q. And did you speak with him over the phone?

10 A. I did.

11 Q. When, if ever, did Mr. Teman tell you that he would deposit
12 checks that he wrote from the 518 West 204 LLC account?

13 MR. GELFAND: Objection, your Honor.

14 Asked and answered.

15 THE COURT: One moment.

16 Overruled.

17 A. Never.

18 Q. When, if ever, have you ever allowed any vendor to write
19 checks on their own behalf from the 518 West 204 LLC account?

20 MR. GELFAND: Objection, your Honor.

21 Asked and answered.

22 THE COURT: Sustained.

23 MR. BHATIA: One moment, your Honor.

24 (Counsel conferred)

25 MR. BHATIA: No further questions, your Honor.

K1NVTEM3

Gabay - cross

1 THE COURT: All right. Cross-examination.

2 Mr. Gelfand.

3 CROSS-EXAMINATION

4 BY MR. GELFAND:

5 Q. Good afternoon, Mr. Gabay.

6 A. Good afternoon.

7 Q. Mr. Gabay, my name is Justin Gelfand. I'm an attorney for
8 Mr. Teman. You and I have never met; correct?

9 A. That's correct.

10 Q. You and I have never spoken; correct?

11 A. Correct.

12 Q. Mr. Gabay, you testified that your company owns and manages
13 properties, you said commercial properties, in New York City;
14 correct?

15 A. Manages.

16 Q. Okay. And when you say "commercial properties," just to be
17 clear, these are apartment buildings that people live in, they
18 are commercial properties in the sense that they are owned?

19 A. They are apartment buildings, yes.

20 Q. And in doing so and operating the company, you regularly
21 enter into business relationships with vendors; correct?

22 A. That's correct.

23 Q. And you regularly enter into contracts and other agreements
24 with those vendors; correct?

25 A. Yes.

K1NVTEM3

Gabay - cross

1 Q. Is it fair to say that just in the ordinary course of the
2 business of your company, those business relationships can
3 often take different forms in the sense of how the agreements
4 are entered into?

5 A. In our company they usually have a similar form.

6 Q. To be clear, sometimes the terms of contracts will be
7 negotiated; correct?

8 A. Yes.

9 Q. Sometimes the company will accept terms and become a
10 customer; correct?

11 A. Sometimes.

12 Q. And the point here is that different business
13 relationships, different transactions, inevitably just take
14 different form, depending on who the vendor is that you're
15 dealing with; correct?

16 A. Okay.

17 Q. Now, you agree that your company did, in fact, have a
18 business relationship with GateGuard; correct?

19 A. That's correct.

20 Q. And you agree that you chose to become a customer of
21 GateGuard; correct?

22 A. Yes.

23 Q. And you agree, as you testified while the prosecutor was
24 asking you questions, that at the time that you did,
25 GateGuard's system was unique based on what was on the market;

K1NVTEM3

Gabay - cross

1 correct?

2 MR. BHATIA: Objection, your Honor.

3 THE COURT: Sustained.

4 Q. When you became a customer of GateGuard, were you familiar
5 with other available possible intercom and technology systems?

6 A. Yes, we had looked at others.

7 Q. Is it fair to say GateGuard's system was cutting-edge?

8 A. It claimed to be.

9 Q. And, in fact, you expressed an interest in it because it
10 was cutting-edge; correct?

11 A. That's correct.

12 Q. Now, to be clear, at the time you knew that GateGuard had
13 customers all over New York City; correct?

14 A. That's what I was told.

15 Q. Okay. And, in fact, as you testified, you actually met
16 personally with Ari Teman at a trade show; correct?

17 A. Correct.

18 Q. And just generally speaking, what do you mean by "trade
19 show"?

20 A. A trade show is a place where people in and around a
21 specific industry will come and exhibit products or services.

22 Q. And the trade show that you -- that GateGuard was -- or had
23 a presence in, do you recall what that trade show was?

24 A. I don't remember which one it was.

25 Q. Okay. GateGuard had a booth, in essence, at that trade

K1NVTEM3

Gabay - cross

1 show; correct?

2 A. Yes.

3 Q. And in that trade show, you had an opportunity to see at
4 least a demo of GateGuard's technology at the time; correct?

5 A. Part of it, yeah.

6 Q. And after that trade show, you had actually asked Mr. Teman
7 to do a personal demo of the GateGuard equipment and
8 technology; correct?

9 A. That's correct.

10 Q. And you said that that happened, I believe, at your office
11 in greater New York?

12 A. Yeah.

13 Q. Now, that meeting, Mr. Teman was present on behalf of
14 GateGuard; correct?

15 A. Correct.

16 Q. And who else was present on behalf of your company, if
17 anyone?

18 A. We had some of the managers there.

19 Q. During this meeting, you had an opportunity to see what
20 GateGuard's intercom system was; correct?

21 A. Part of the functionality. We were told that there was
22 some other things which were in development.

23 Q. And, in fact, is it fair to say that when you initially
24 bought the GateGuard -- or became a customer of GateGuard, it
25 wasn't just an intercom, there was a website interface as well?

K1NVTEM3

Gabay - cross

1 A. Correct.

2 Q. And the website interface enabled you or others in your
3 company to actually see time-stamped logs and photographs of
4 who was entering your building at any given time; correct?

5 A. Yes.

6 Q. And that was valuable to you because you could actually use
7 that information for whatever business purpose you have;
8 correct?

9 A. Yes.

10 Q. So, for example, if you wanted to see if the same person
11 was going into Unit 110, you would have pictures of the dates
12 and times of everyone that was going into Unit 110; correct?

13 A. I believe so, yeah.

14 Q. And you had an opportunity throughout your entire business
15 relationship with GateGuard to log into that web-based system
16 and access those logs for your building; correct?

17 A. Yeah, I believe so, yeah.

18 Q. And you or others in your company did, in fact, do that;
19 correct?

20 A. Yes.

21 Q. In doing that, there's not only photographs and time stamps
22 that are taken, but there's ways to basically organize the data
23 on your end; correct?

24 A. I'm not familiar with the complete functionality of the
25 interface.

K1NVTEM3

Gabay - cross

1 Q. Now, to log into the system at GateGuard, did you need a
2 user name/password type setup?

3 A. Yeah.

4 Q. So to be clear, some random person off the street couldn't
5 get access to the data that GateGuard was storing for you;
6 correct?

7 A. That's correct.

8 Q. And GateGuard was storing that data indefinitely for you;
9 correct?

10 A. I don't know if it was indefinite or not.

11 Q. Was there a limit?

12 A. I don't know.

13 Q. Were there ever times that you logged on and couldn't see
14 certain records because it was too old?

15 A. Not that I recall.

16 Q. The point is, is it fair to say that when you were a
17 customer of GateGuard, it was more than just a physical device;
18 there was an entire web-based application of technology there?

19 A. Yes.

20 Q. And data storage?

21 A. I'm sorry?

22 Q. And data storage.

23 A. Yes.

24 Q. Now, you testified that you had basically bought
25 essentially the 1.0 version of the intercom device; correct?

K1NVTEM3

Gabay - cross

1 A. Yes.

2 Q. And you testified that at the time you were aware that
3 GateGuard overseas was manufacturing essentially the next
4 generation of the system; correct?

5 A. I was told that the funds from our deposits were going to
6 be used to get the manufacturing off the ground.

7 Q. And your understanding or at least what was communicated to
8 you was that that manufacturing was happening in China;
9 correct?

10 A. Correct.

11 Q. And you were interested in getting the first system,
12 essentially getting in early, but ultimately, at the time,
13 upgrading when the new technology was available; correct?

14 A. No. We had an immediate need, and so we spoke with
15 Mr. Teman about putting in that version 1.0 on a temporary
16 basis.

17 Q. To become a GateGuard customer when you did -- we're going
18 to get to the other stuff later -- so we're on the same page,
19 you readily admit that you bought the system that you claim you
20 believed you paid \$3600 for; correct?

21 A. I paid \$3600.

22 Q. And you got a device?

23 A. To use the system, yes.

24 Q. To become a customer of GateGuard at that time, you had to
25 do so on GateGuard's website; correct?

K1NVTEM3

Gabay - cross

1 A. I don't know.

2 Q. You're saying no or you're saying you don't remember?

3 A. I'm saying I don't know.

4 Q. Okay. Do you know if it was you or someone else at your
5 company that actually signed up for GateGuard?

6 A. I don't recall.

7 Q. So your testimony, if I understand it, is that it could
8 have been someone else at your company that signed up for
9 GateGuard on the website?

10 MR. BHATIA: Objection, your Honor. Foundation.

11 THE COURT: Sustained.

12 Assumes a fact not in evidence.

13 Q. Do other people at your company have the authority to sign
14 up for vendors like GateGuard?

15 A. No.

16 Q. So sitting here today, to be clear, you're not denying that
17 you signed up online, you're just saying you don't remember?

18 A. That's correct.

19 THE COURT: Mr. Gelfand, can you just clarify what you
20 mean by "signed up online"? I think it's unclear to me what
21 that is conveying, just for clarity for the jury.

22 MR. GELFAND: Sure.

23 Q. To actually become a GateGuard customer, you had to provide
24 GateGuard certain information about your building; correct?

25 A. I guess so.

K1NVTEM3

Gabay - cross

1 Q. And in doing so, you had to, if you recall, check a box on
2 the website to become a customer?

3 A. I don't recall.

4 Q. You don't recall. Okay.

5 To be clear -- well --

6 A. Do you want me to explain my answer?

7 Q. Sure, I'm happy to have you explain your answer.

8 A. Okay. So the reason I don't recall doing this is because
9 had I filled out a form, I would have put in the correct owning
10 entity in that form. But as you can see from the invoice, the
11 invoices were not made out to our owning entity, they were made
12 out to a prior owner. I would have not put in that prior
13 owner's entity in the form if I signed up for the service.

14 Q. Let me get this straight for a second. I appreciate your
15 explanation, but is it your testimony under oath that you
16 remember how it was you became a customer of GateGuard?

17 A. No, it's not. My testimony is if I would have signed up, I
18 would have put in our entity information.

19 Q. Now, at least at some point, as the prosecutor asked you,
20 you went on to the GateGuard website and downloaded the terms
21 and conditions; correct?

22 A. That's correct.

23 Q. And you actually downloaded them and put them into a
24 Microsoft Word document; correct?

25 A. That's correct.

K1NVTEM3

Gabay - cross

1 Q. And you essentially took that document and used redlining
2 or markup revision features to show proposed edits to that
3 document; correct?

4 A. That's correct.

5 Q. Okay. Do you see Exhibit 415 in front of you?

6 A. Yes.

7 Q. Now, Exhibit 415, as you went over with the prosecutor --

8 THE COURT: Can the ladies and gentlemen of the jury
9 see it now? Okay. Very good. Thank you.

10 Q. This was a March 25th, 2018 email from you to Mr. Teman,
11 cc'ing Yoni, or Jonathan, Irom, and including a document;
12 correct?

13 A. Correct.

14 Q. That document was your markup of the terms and conditions;
15 correct?

16 A. Correct.

17 Q. And to be clear, you identified that this document that the
18 prosecutor put into evidence is a document that you personally
19 downloaded and then marked up; correct?

20 A. That's correct.

21 Q. Okay. So this is from you. It's not from the defense, for
22 lack of a better way of putting it; correct?

23 A. That's correct.

24 Q. Tell me the date that appears on the revision or last
25 revision on these terms and conditions.

K1NVTEM3

Gabay - cross

1 A. It was last revised November 30th, 2017 at 3:30 p.m.

2 Q. And to be clear, you agree with me that that date was
3 before you ever became a GateGuard customer; correct?

4 A. I'm not sure.

5 Q. Would that first email from support.teman refresh your
6 memory as to the date?

7 A. I'm sorry, say again?

8 Q. I'm showing you Exhibit 412. Was this the first
9 correspondence that you essentially received confirming the
10 system worked?

11 A. It must have been early on. I don't know if it's the
12 first.

13 Q. Fair to say that's January of 2018?

14 A. Correct.

15 Q. After the November 2017 date on the terms and conditions;
16 correct?

17 A. Correct.

18 Q. On the document that you marked up, first of all, you
19 initially sent a draft to Mr. Teman and an attorney; correct?

20 A. I responded to an email from Mr. Teman who had cc'd his
21 attorney on his initial discussions with me.

22 Q. Okay. And you had basically sent a follow-up saying,
23 Sorry, I didn't mean to cc your attorney. Paraphrased.

24 A. That's correct. I didn't know if he wanted that to be.

25 Q. Okay. In this markup that you did, on this November 2017

K1NVTEM3

Gabay - cross

1 revision, do you see there's a Section 5?

2 A. I do.

3 Q. And Section 5, if I can zoom in for you, refers to orders
4 and fees, pricing; correct?

5 A. Correct.

6 Q. And could you read the beginning of this paragraph?

7 A. You may purchase subscriptions to services by submitting
8 orders via the site. All orders are subject to acceptance by
9 GateGuard. The applicable fees shall be stipulated in the
10 price list made available by GateGuard on the site from time to
11 time and subject to the additional payment terms stipulated
12 at --

13 Q. The website?

14 A. -- the website a/k/a pricing.

15 Q. From time to time; correct?

16 A. From time to time, yes.

17 Q. Okay. And at least at the time that you were doing the
18 markup, you obviously read this paragraph because you proposed
19 a change to "reasonably," and then you proposed deleting some
20 language at the bottom of that paragraph; correct?

21 A. That's correct.

22 Q. But your testimony is that you didn't click on the payment
23 URL?

24 A. My testimony is that I don't recall clicking on it.

25 Q. Now, in becoming -- back up for a second.

K1NVTEM3

Gabay - cross

1 We talked briefly about the logs that GateGuard
2 maintained for your building on its website; correct?

3 A. Yes.

4 Q. And is it fair to say there are thousands of pages of logs
5 of people coming into and out of the building in that related
6 data?

7 A. I don't know how many pages there are.

8 Q. Is it a large number?

9 A. I don't know.

10 Q. You testified that there were instances early on whether
11 some troubleshooting was necessary; correct?

12 A. Correct.

13 Q. And GateGuard provided that tech support; correct?

14 A. Correct.

15 Q. GateGuard was responsive to problems that it could fix;
16 correct?

17 A. Correct.

18 Q. And there was a time when there was a problem at your
19 building with Spectrum; correct?

20 A. I believe so.

21 Q. And to be clear, the early iteration of GateGuard did not
22 have a 4G router; correct?

23 A. I don't believe it did.

24 Q. It relied on you to have viable internet --

25 A. Correct.

K1NVTEM3

Gabay - cross

1 Q. -- to work; correct?

2 A. Yes.

3 Q. And GateGuard couldn't control whether your internet
4 worked; correct?

5 A. Correct.

6 Q. That building at the time at least obtained its internet
7 from Spectrum; correct?

8 A. Correct.

9 Q. So through some troubleshooting with your -- whatever the
10 title is, but the on-site property manager, it was brought to
11 your attention that there was a problem with the internet
12 connection and that it wasn't actually a problem with
13 GateGuard; correct?

14 A. At one point, yes.

15 Q. And at the time, GateGuard -- even though it turns out it
16 wasn't able to fix that because it was a separate internet
17 problem, GateGuard was working with your company to figure that
18 out and to fix it, if at all possible; correct?

19 A. Yes.

20 Q. Now, throughout a fairly lengthy period of time, that
21 building used the GateGuard intercom; correct?

22 A. What do you mean by "lengthy period of time"?

23 Q. How long did you use the intercom system?

24 A. Probably for a few months.

25 Q. And during that time, it was used every day; correct?

K1NVTEM3

Gabay - cross

1 A. Yes.

2 Q. And the government showed you, you testified, it's Exhibit
3 413, the initial invoice correspondence for becoming a
4 GateGuard -- when you became a GateGuard customer; correct?

5 A. I'm not seeing anything here. Oh.

6 Q. Do you see on the top the correspondence you previously
7 testified to?

8 A. Yes.

9 Q. Okay. And what's the date there?

10 A. January 19, 2018.

11 Q. Again, after the November 2017 date; correct?

12 A. That's right.

13 Q. And if you look through this correspondence, initially
14 there was supposed to be a \$3600 fee and a security deposit of
15 \$849; correct?

16 A. Mr. Teman notified me of the 849 for the first time in this
17 email. Our discussions previously had been \$3600 only.

18 Q. And you had asked him to basically waive the security
19 deposit; correct?

20 A. I had asked him to agree to our original discussion price
21 of \$3600.

22 Q. And the invoice reflects zero dollars charged to you for
23 the security deposit; correct?

24 A. Correct.

25 Q. With a unit cost, meaning not charged to you, of \$849;

K1NVTEM3

Gabay - cross

1 correct?

2 A. Correct.

3 Q. And what's the date of the invoice?

4 A. January 19th, 2018.

5 Q. At the bottom of this invoice, where it says "terms," can
6 you tell me -- can you read what that says?

7 A. Buyer accepts terms and conditions at a website,
8 gateguard.xyz.

9 Q. And you paid this invoice; correct?

10 A. Yes, it was paid.

11 Q. Now, you testified -- to be clear, that invoice we just
12 said was January 19th of 2018; correct?

13 A. Correct.

14 Q. Then Government Exhibit 414 is additional email
15 correspondence between you and Mr. Teman; correct?

16 A. Correct.

17 Q. The prosecutor asked you about this email from you saying:
18 Sections 5K and 5L of your terms and conditions are pretty
19 brutal. I stopped reading after I saw them. Correct?

20 A. Correct.

21 Q. That email was within days that the invoice was sent;
22 correct?

23 A. Correct.

24 Q. So this wasn't some discussion when you were marking this
25 up months later; correct?

K1NVTEM3

Gabay - cross

1 A. This was a discussion related to the larger order.

2 Q. My question was on timing. It was a couple of days after
3 the invoice was sent; correct?

4 A. That's right.

5 Q. And, in fact, the way you paid the invoice was by check;
6 correct?

7 A. That's right.

8 MR. GELFAND: Counsel, what exhibit number was that
9 check? Exhibit 146?

10 Q. I'm showing you what's been previously admitted as
11 Government's Exhibit 146. Can you see that on the screen in
12 front of you, Mr. Gabay?

13 A. Yes.

14 Q. Now, you testified previously that this was your check, in
15 other words, your company's check?

16 A. That's correct.

17 Q. And this was for the payment for the invoice of \$3600 that
18 we just discussed; correct?

19 A. Correct.

20 Q. What's the date on that check?

21 A. January 31st, 2018.

22 Q. Is it fair to say January 19th, the invoice is generated;
23 correct?

24 A. Yes.

25 Q. January 23rd, you send a markup of terms and conditions

K1NVTEM3

Gabay - cross

1 with proposed changes; correct?

2 A. Yes.

3 Q. January 31st, eight days after that, you send in the check
4 for the invoice?

5 A. That is accurate.

6 Q. And the invoice expressly says that you agree to the terms
7 and conditions that we just read?

8 A. That's what the invoice says.

9 Q. That's on the bottom; correct?

10 A. That's what it says, yes.

11 Q. And the invoice obviously predates you sending the check;
12 correct?

13 A. Yes.

14 Q. Now, if I understood your testimony correctly, is it your
15 testimony that you believe that you paid 3600 bucks for this
16 device, and then you can use it and GateGuard's web-based
17 interface forever?

18 A. I think this device and this \$3600 was part of a larger
19 pending deal.

20 Q. Meaning that you understood that additional monies would be
21 owed; correct?

22 A. I understood that this device would be replaced for a newer
23 device which had more functionality, which is what we had -- we
24 were in discussions to sign up for. But that this device was
25 going to be put in on a temporary basis, because we had an

K1NVTEM3

Gabay - cross

1 immediate need.

2 Q. And the point -- and you knew at the time that, as we've
3 previously talked about, that the newer device was being
4 manufactured at the time; correct?

5 A. That's what I was told, yes.

6 Q. Okay. And so you understood that to have GateGuard on an
7 ongoing basis, it was going to cost you more than 3600 bucks;
8 correct?

9 A. Once the deal was finalized, yes.

10 Q. And you expected to pay more money to GateGuard; correct?

11 A. When the deal was finalized.

12 Q. Yes?

13 A. Yes.

14 Q. Okay. Now, you testified that in March, essentially
15 communications broke down between you and Mr. Teman; correct?

16 A. Correct.

17 Q. And the government asked you questions about some email
18 correspondence regarding those communications; correct?

19 A. Correct.

20 Q. The government showed you, so we can get some dates
21 straight, Government Exhibit 416. Do you see that in front of
22 you?

23 A. Yes.

24 Q. This email, I'll zoom in so we can all see it, where you
25 said that the quotes, if I understood your testimony correctly,

K1NVTEM3

Gabay - cross

1 was basically, what, a general consensus within the office?

2 A. Yeah.

3 Q. Okay. The email was from you to Mr. Teman; correct?

4 A. Correct.

5 Q. And it references an invoice for 20 buildings and a
6 document called a convertible note; correct?

7 A. It references an email with that title.

8 Q. And there was previous correspondence that you testified
9 about involving this initial correspondence where Mr. Teman had
10 cc'd a lawyer; correct?

11 A. I'm sorry, can you repeat that?

12 Q. Yes. Prior to this correspondence -- this was a response
13 to an email; correct?

14 A. Correct.

15 Q. March 13th of the same exhibit, there's the initial email
16 from Mr. Teman to you, cc'ing an attorney; correct?

17 A. Yes.

18 Q. And the prosecutor had you read this, or part of it, into
19 the record. And it references the bottom enumerated No. 2.
20 Can you read that? Can you see that?

21 A. Yes.

22 Q. Okay. This references a note for Friend or Fraud, Inc.,
23 identifying it as essentially the parent company for GateGuard
24 Incorporated, among other companies; correct?

25 A. Correct.

K1NVTEM3

Gabay - cross

1 Q. And it says: If you have any questions, contact this guy
2 that represented Waze; correct?

3 A. Correct.

4 Q. Who is cc'd on the email; correct?

5 A. Correct.

6 Q. And the reason you were getting this is because at the time
7 you were actually interested in investing in GateGuard;
8 correct?

9 A. That's correct.

10 Q. And you were interested in investing in GateGuard because
11 it was cutting-edge; correct?

12 A. Correct.

13 Q. So to keep our dates straight -- I'm sorry. To keep our
14 dates straight, you send this email on March 26th of 2018,
15 responding to that basically saying, my words, Time out. We're
16 not moving forward. Correct?

17 A. Correct.

18 Q. And that's at approximately 5 p.m. on March 26th?

19 A. Correct.

20 Q. Soon thereafter, you testified that you received email
21 correspondence from Mr. Teman's or GateGuard's attorney;
22 correct?

23 A. Correct.

24 Q. And that was an individual named Ariel Reinitz; correct?

25 A. Yes.

K1NVTEM3

Gabay - cross

1 MR. GELFAND: Your Honor, may I show just the witness
2 a document?

3 THE COURT: You may.

4 Q. I'm showing you just for the record what's been previously
5 marked as Defendant's Exhibit 36. Can you see that on the
6 screen in front of you?

7 THE COURT: A little larger please.

8 MR. GELFAND: Yes.

9 JUROR: Can we see?

10 THE COURT: It's not in evidence.

11 MR. GELFAND: May I proceed, your Honor?

12 THE COURT: One moment.

13 Go ahead.

14 One moment.

15 Q. Do you recognize --

16 THE COURT: One moment.

17 MR. GELFAND: I'm sorry.

18 THE COURT: All right. Counsel, you need to tilt your
19 monitor so it's not visible to the jury as to exhibits that are
20 not yet in evidence.

21 MR. GELFAND: Oh, sorry about that.

22 THE COURT: That goes for both tables.

23 Okay. Ladies and gentlemen, this may or may not be
24 received in evidence, but until it is, it's properly kept from
25 you.

K1NVTEM3

Gabay - cross

1 Go ahead.

2 JUROR: We don't see that far away.

3 THE COURT: All the better then. Very good.

4 So go ahead, Mr. Gelfand.

5 BY MR. GELFAND:

6 Q. Mr. Gabay, do you recognize the email that's in front of
7 you?

8 A. I do.

9 Q. And is this an email -- a true and accurate copy of email
10 correspondence between you and Mr. Reinitz?

11 A. It appears so, yes.

12 Q. And the same thread that you previously testified about,
13 re-invoice for 20 buildings and convertible note?

14 A. Correct.

15 MR. GELFAND: Your Honor, I move Defendant's Exhibit
16 36 into evidence.

17 THE COURT: Any objection?

18 MR. BHATIA: No objection.

19 THE COURT: Received.

20 (Defendant's Exhibit 36 received in evidence)

21 MR. GELFAND: May I publish it for the jury?

22 THE COURT: You may.

23 You're not publishing; you've taken it off the Elmo.

24 MR. GELFAND: Yes, I was getting ready to --

25 THE COURT: Okay.

K1NVTEM3

Gabay - cross

1 Q. Okay. So just to back up for a second, we just testified
2 about a chain, a string of emails, if you will, re-invoice for
3 20 buildings; correct?

4 A. That's correct.

5 Q. And you testified earlier about a March 26, 2018,
6 essentially, approximately, 5 o'clock email from you saying --
7 again, my words, not yours -- Time out. Correct?

8 A. Yes.

9 Q. Okay. About a day and-a-half later, March 28th, at
10 approximately 1:40 p.m., you received this email, Defendant's
11 Exhibit 36, from Ariel Reinitz; correct?

12 A. Yes.

13 Q. And Ariel Reinitz identifies himself as a partner at the
14 law firm of FisherBroyles, with a New York address and about, I
15 don't know, 15 or so cities at the bottom; correct?

16 A. Yes.

17 Q. And the email identifies to you that Mr. Reinitz is an
18 attorney representing GateGuard; correct?

19 A. Yes.

20 Q. Could you please read this paragraph that I've highlighted
21 on the screen. It's the one beginning "As outlined below."

22 A. As outlined below --

23 THE COURT: Read it, sorry, a little bit more slowly
24 for the benefit of the court reporter and the jury.

25 A. Sorry. As outlined below, GateGuard has provided materials

K1NVTEM3

Gabay - cross

1 and performed labor on one or more of Coney Realty's buildings,
2 and the corresponding invoices are now past due. Coney Realty
3 has also entered into agreements with GateGuard for devices and
4 services, payments for which are now due.

5 Q. And then if we jump forward, first of all, just so everyone
6 is clear, the next paragraph basically says that these invoices
7 and agreements are important to GateGuard; correct?

8 A. Correct.

9 Q. And then Mr. Reinitz says, essentially, Let's see if we can
10 reach a mutual amicable resolution. Correct?

11 A. Correct.

12 Q. And to that end, he makes a request of you; correct?

13 A. He does.

14 Q. He says: Please reply with a prompt introduction to the
15 appropriate personnel at Coney Realty or your counsel having
16 authority to resolve this matter. Correct?

17 A. Correct.

18 Q. And then he says: Absent a prompt response from Coney
19 Realty, GateGuard may initiate further legal action, including,
20 but not limited to, the filing of a mechanic's lien.

21 Sincerely, Ariel Reinitz, and his signature block. Correct?

22 A. Correct.

23 Q. You didn't respond to this email, did you?

24 A. I don't recall if I responded.

25 MR. BHATIA: Judge Engelmayer, we believe there's

K1NVTEM3

Gabay - cross

1 hearsay in this document --

2 THE COURT: Sorry, you're speaking --

3 MR. BHATIA: Excuse me.

4 We believe there's hearsay in this document, and we'd
5 request an appropriate instruction.

6 THE COURT: Sorry. You didn't object on that ground
7 when it was received. It's in evidence.

8 Next question.

9 BY MR. GELFAND:

10 Q. Now, after this email -- I'm sorry, I think you just
11 answered it, but I didn't hear you.

12 THE COURT: Sorry. Let me just clarify something.

13 The document is in evidence.

14 Ladies and gentlemen, you may consider this document
15 as it reflects upon the discussions between the lawyer,
16 Reinitz, and the witness, Gabay.

17 To the extent there are statements of fact, however,
18 that are in this document, you may not take them as necessarily
19 true or false; they are just simply being put before you to
20 capture the discussions between the lawyer and Mr. Gabay.

21 But the fact that something is said by the lawyer in
22 the document does not necessarily make it so, and you may not
23 consider what is in the document for the truth of the matter
24 asserted.

25 Counsel, in the future, if a document that embeds

K1NVTEM3

Gabay - cross

1 hearsay like that is being offered, you need to object at the
2 time rather than accede to its receipt.

3 MR. BHATIA: I understand.

4 THE COURT: Go ahead.

5 BY MR. GELFAND:

6 Q. And I'm sorry, I just didn't catch your answer before as to
7 whether or not you responded to this email.

8 A. I don't recall if I responded. I'm not sure. I'd have to
9 check.

10 Q. Now, you testified, jumping ahead, that you were made aware
11 by your bank of the checks, the RCCs, that were deposited into
12 the Bank of America account of GateGuard and directed
13 ultimately to your bank; correct?

14 A. Yes.

15 Q. And to be clear, your bank was Signature Bank; correct?

16 A. Correct.

17 Q. And if I understood your testimony correctly, your bank
18 essentially brought these RCCs to your attention and asked
19 whether they were authorized, in essence; correct?

20 A. That's correct, my office.

21 Q. Your office?

22 A. Yeah.

23 Q. And your office provided a response to Signature Bank, in
24 essence, saying that they weren't authorized; correct?

25 A. That's correct.

K1NVTEM3

Gabay - cross

1 Q. And when you say your office, who are the -- I'm not asking
2 for everyone, but who are essentially the main players that
3 would have been involved in this?

4 A. Involved in this how?

5 Q. Communications with Signature Bank, those kinds of things.

6 A. It might be Michael Haas, who's a signer on the account.

7 Q. You said Michael Haas?

8 A. Correct.

9 Q. Okay. And who is Michael Haas?

10 A. He's one of the principals of Coney Management.

11 Q. Fair to say you and Michael Haas work very closely
12 together?

13 A. Yes.

14 Q. You testified at the way beginning of your direct
15 examination with the prosecutor that essentially you take on
16 responsibility for the financial operations of Coney; correct?

17 A. Some of them, yes.

18 Q. And Michael Haas is just as involved in that; correct?

19 A. Correct.

20 Q. Now, I was asking you about the checks that say, Draw per
21 contract. No signature required, that your bank brought to
22 your attention. Correct?

23 A. I'm sorry, say again?

24 Q. I was asking you about the checks that say, Draw per
25 contract. No signature required, that were brought to your

K1NVTEM3

Gabay - cross

1 attention; correct?

2 A. Correct. That you asked me about them?

3 Q. Yes.

4 A. Yes, you did ask me about them.

5 Q. And your company informed Signature Bank that you didn't
6 authorize them; correct?

7 A. That's correct.

8 Q. Now, let's back up for a second.

9 Signature Bank asked your company questions about this
10 to find out if it should credit your account or charge back the
11 checks; correct?

12 A. They sent an email asking if this check was authorized by
13 our office, and we said no.

14 Q. And you would agree with me that it wouldn't be true to
15 tell Signature Bank that your company didn't even know
16 GateGuard or what GateGuard was; correct?

17 A. We knew what GateGuard was, yes.

18 Q. So it would be a lie to say you didn't know that; correct?

19 A. That I didn't know what?

20 Q. What GateGuard was.

21 A. Correct.

22 Q. Okay. And you'd agree with me that it would also be a lie
23 to tell your bank that your company has no recollection or
24 record of ever owing GateGuard any money; correct?

25 A. At that point in time we had no recollection of owing

K1NVTEM3

Gabay - cross

1 GateGuard any money at that point in time; correct.

2 Q. Ever owing money.

3 A. Well, we owed them money between January 19th and January
4 31st.

5 Q. Yes.

6 A. And we paid that invoice.

7 Q. Yes. You knew exactly who GateGuard was, as you've
8 previously testified about?

9 A. Correct.

10 Q. And at some point you owed GateGuard money; correct?

11 A. Correct.

12 MR. GELFAND: Your Honor, pursuant to our stipulation
13 with the government, at this point I move Defense Exhibit D-29
14 into evidence.

15 THE COURT: D?

16 MR. GELFAND: I'm sorry, I just said D dash, for
17 defense exhibit. Exhibit 29.

18 THE COURT: Defense Exhibit 29.

19 Any objection?

20 MR. BHATIA: No objection.

21 THE COURT: I don't believe I have a copy of that,
22 counsel.

23 MR. GELFAND: I can approach, your Honor.

24 THE COURT: Thank you.

25 MR. GELFAND: Can you see this on the screen?

K1NVTEM3

Gabay - cross

1 THE COURT: One moment.

2 MR. GELFAND: I'm sorry.

3 THE COURT: Received.

4 (Defendant's Exhibit 29 received in evidence)

5 THE COURT: Do you wish to publish it to the jury?

6 MR. GELFAND: Yes, your Honor.

7 THE COURT: You may do so.

8 MR. GELFAND: Thank you.

9 BY MR. GELFAND:

10 Q. Can you see this on the screen in front of you, sir?

11 A. Yes.

12 Q. Okay. This is an affidavit. The bank calls it an
13 affidavit of counterfeit or stolen check business; correct?

14 A. Correct.

15 Q. And specifically this references the check to GateGuard,
16 Inc. in the amount of \$18,000, Check No. 1; correct?

17 A. Correct.

18 Q. Now, to be clear, this is a form -- let me just back up so
19 that the jury has some context.

20 It's a one-page form; correct?

21 A. It appears so.

22 Q. And if we look at it, you identified Michael Haas. For the
23 court reporter, it's H-A-A-S.

24 A. Correct.

25 Q. And this is the owner of the entity that we're talking

K1NVTEM3

Gabay - cross

1 about; correct?

2 A. One of them, yes.

3 Q. I'm sorry, you said one of them, yes?

4 A. Yes.

5 Q. Okay. Can you please read what No. 6 says?

6 A. Neither I nor the company knows the payees on these checks
7 or have any recollection or record of the company ever owing
8 these payees any money whatsoever.

9 Q. The payee is GateGuard, Inc.; correct?

10 A. Yes.

11 Q. And your company is telling the bank that you don't know
12 who GateGuard is; correct?

13 A. That's what it says.

14 Q. Can you please read the bottom paragraph, beginning with
15 "Affiant is aware"?

16 A. Affiant is aware that this affidavit is being provided to
17 the bank to obtain for the company reimbursement of the amounts
18 of these checks. The bank will rely on this affidavit to
19 recover the amounts paid with respect to these checks. And any
20 false statement made in this affidavit is a violation of the
21 law. Affiant represents and warrants that all statements
22 contained in this affidavit are true and complete in all
23 respects.

24 Q. And this is dated and notarized on April 4th of 2019;
25 correct?

K1NVTEM3

Gabay - cross

1 A. That's correct.

2 Q. And the notary is Ephraim Niehenberg; correct?

3 A. Yes.

4 Q. Do you know that person?

5 A. I do.

6 Q. Who is that?

7 A. That is a manager in my office.

8 Q. I'm sorry?

9 A. A manager in my office.

10 (Continued on next page)

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Gabay - cross

1 MR. GELFAND: May I proceed?

2 THE COURT: You may inquire.

3 MR. GELFAND: Thank you.

4 BY MR. GELFAND:

5 Q. To the best of your knowledge, to this day, have you or
6 anyone else at your company ever made any efforts to correct
7 any false statements to Signature Bank in connection with this?

8 MR. BHATIA: Objection, your Honor.

9 THE COURT: Overruled.

10 A. Are you referring to any specific --

11 THE COURT: Sorry. Let me rephrase the question for
12 you. Get rid of the word "false." It assumes a fact not in
13 evidence.

14 You may ask whether there has been any attempt to make
15 any revisions to this document.

16 MR. GELFAND: Fair enough.

17 BY MR. GELFAND:

18 Q. To this day, have you on your company ever revised this
19 affidavit or a similar document?

20 A. I'm not aware.

21 MR. GELFAND: Your Honor, I have no further questions.

22 THE COURT: All right. Ladies and gentlemen, this is
23 a good time, I think, for our lunch break. Mr. Smallman will
24 come get you at 2 o'clock and bring you into the jury box.

25 Have a good lunch. As always, please do not discuss

klndtem4a

1 the case.

2 THE CLERK: All rise.

3 (Jury not present)

4 THE COURT: All right. Be seated.

5 Counsel, I have an item or two, very small, for you,
6 but before I go, does anybody have anything to raise with me?

7 MR. BHATIA: No, your Honor. May the witness be
8 excused?

9 THE COURT: Yes, please, actually.

10 MR. GELFAND: No, your Honor.

11 THE WITNESS: Do I need to come back?

12 THE COURT: You absolutely will need to come back.
13 Government counsel will give you instructions about where to be
14 and when, but I will need you here by 2 o'clock.

15 So, stay outside. Government counsel will explain the
16 logistics.

17 (Witness not present)

18 All right. Just a couple of things.

19 Counsel, this goes for everybody but I think
20 especially for government counsel: When you are reading a
21 document, the natural impulse is to speed up, but it becomes
22 very hard for the jury and especially hard for the court
23 reporter to absorb what is being said. So just take the time
24 to slow down anytime you are reading a document to be picked up
25 by the court reporter.

klndtem4a

1 MR. BHATIA: Yes. Thank you.

2 THE COURT: All right. Defense Exhibit 36 is,
3 although clearly admissible, also clearly embedded with a lot
4 of hearsay. I was surprised there was no objection by
5 government counsel.

6 Mr. Imperatore, I am speaking to your co-counsel here.
7 It is unhelpful for me for him to be unable to hear me.

8 MR. IMPERATORE: I apologize, your Honor.

9 THE COURT: Mr. Bhatia, I was very surprised there was
10 no objection to the exhibit. It's full of hearsay. It is
11 clearly admissible to explain the course of dealings between
12 the witness and the defendant, and it may yet bear on advice of
13 counsel, as it will later emerge. Notwithstanding the lack of
14 timely objection to it, ultimately I rethought my first
15 instinct and agreed it made sense to instruct the jury what we
16 all I think would agree is correct, which is that the
17 statements that are in that document can't be treated for the
18 truth of the matter asserted. But, please, be more attentive.
19 Just because a document can be received for a limited purpose
20 doesn't mean it can be received for all purposes, and in the
21 end it is on you to police that by your objections so that I
22 know that there is a limiting instruction to be given. OK?

23 MR. BHATIA: Understood.

24 THE COURT: One thing that is becoming quite clear to
25 me is that the defense request for a unanimity instruction with

klndtem4a

1 respect to the counts here that embed multiple customers is
2 almost certainly a wise instruction. I don't know yet what the
3 other narratives will be, but it seems to me clear that each
4 customer has its own narrative with respect to Mr. Teman, and,
5 therefore, it seems to me extremely likely that a unanimity
6 instruction will be needed. And it may well be as well, and I
7 increasingly think this is possible, that something on the
8 verdict form will be needed to specify vis-a-vis particular
9 victims -- not victims but particular customers whose checks
10 are at issue on particular accounts. I think that will help
11 assure, essentially, that the unanimity instruction is needed.

12 So I will ask counsel overnight to confer about the
13 verdict form that the government has previously submitted and
14 see if you can agree on, assuming that I am to ask for
15 specification vis-a-vis particular accounts, how the
16 specification by customer ought to be done. I don't know that
17 it is needed by check. It may be that the customers can be
18 treated as a unity with respect to these accounts. I'm seeing
19 Mr. Gelfand nodding. But it is almost certainly the case that
20 something fruitful could be done there, and I would rather you
21 get started on that discussion sooner rather than later.

22 Again, I am not committing that we would revise the
23 verdict form in that way, but given the likely need for a
24 unanimity instruction, I can see logic to the verdict form
25 similarly focusing the jury's attention on a customer-specific

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1 basis.

2 Mr. Blais, I take it, will be stepping in for you,
3 Mr. Imperatore, at 2 o'clock?

4 MR. IMPERATORE: That is correct.

5 THE COURT: That is fine. I will introduce him to the
6 jury. When do you think you will be back?

7 MR. IMPERATORE: It is a pretrial conference, your
8 Honor. I expect it could last anywhere from 30 minutes to an
9 hour or so.

10 THE COURT: I take it you will be substituting for
11 Mr. Blais as soon as you can get here?

12 MR. IMPERATORE: Yes.

13 THE COURT: Very good.

14 And, finally, just on the daily exhibit list, I'll ask
15 the government's legal assistant to please include the
16 defense exhibits.

17 And defense, you gave me some exhibits today but they
18 didn't include Exhibit 36, and they didn't include I think the
19 one -- Exhibit 29, a subset of the exhibits that you handed up
20 to me.

21 MR. GELFAND: Yes, your Honor.

22 THE COURT: So I will need a running set of the
23 exhibits that you are offering.

24 MR. GELFAND: Absolutely.

25 THE COURT: Very good.

klndtem4a

1 Have a good lunch. I will see you five minutes before

2 2. Thank you.

3 (Luncheon recess)

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A F T E R N O O N S E S S I O N

1:59 p.m.

(Jury, witness, and Mr. Imperatore not present)

(AUSA Brian Blais present)

THE COURT: All right. Welcome back, counsel.

Mr. Smallman tells me we are waiting on two jurors.

Government, without holding you to it, short or long
redirect for this witness?

MR. BHATIA: Very short.

THE COURT: OK. Very good.

And the next witness is who

MR. BHATIA: Bonnie Soon-Osberger.

THE COURT: OK. Very good. That person is waiting
and ready to be brought in?

MR. BHATIA: She is coming up in the elevator. Is she
out there.

A VOICE: She is on her way up.

THE COURT: Very good. Anyone have anything to take
up with me before we get the jury once Mr. Smallman tells me
they are here?

MR. GELFAND: No, your Honor.

THE COURT: OK. Counsel, in the course of the
examination, Mr. Bhatia asked me for a limiting instruction on
Defense Exhibit 36, which I gave, but I gave it, I realize, on
the spot. Does anybody believe any clarification is needed

Klndtem4b

1 with respect to the instruction I gave?

2 MR. GELFAND: Not from the defense, your Honor.

3 MR. BHATIA: No, your Honor. We'll take another look
4 when we get the transcript. If we think there is something
5 else, but my recollection is it is fine.

6 THE COURT: OK. In the event there are further
7 documents of this nature, for example, communications between
8 Ms. Reinitz and another customer as to whom the defendant's
9 dealings are in dispute, presumably there would be occasion for
10 a similar limiting instruction, and at that point if you have
11 something concrete to recommend, I will hear you at the sidebar
12 and I can surely formulate it at that point to be broad enough
13 up to pick up, looking backwards, Exhibit 36 as well. I am
14 mindful of that. As I gave it, I gave it, you know, on the
15 spur of the moment with little chance to reflect. I want to
16 make sure that something like that is -- that an instruction
17 like that is well tailored.

18 MR. BHATIA: Thank you.

19 THE COURT: All right. Let's get the witness.

20 THE CLERK: Everybody is here.

21 THE COURT: Let's bring them in.

22 (Continued on next page)
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Klndtem4b

Gabay - redirect

1 (Witness and jury present)

2 THE COURT: All right. Welcome back, ladies and
3 gentlemen. Please be seated.

4 I hope you all had a good lunch.

5 You'll note a new face at the government table.

6 Mr. Imperatore has a court appearance in another matter and
7 will be back rejoining us a little later this afternoon, and in
8 his stead is Assistant United States Attorney Brian Blais,
9 whose name I mentioned to you during the course of jury
10 selection. So that's the explanation for the change in party
11 personnel.

12 We are ready to resume with the trial.

13 Mr. Gabay, I will remind you that you are still under
14 oath.

15 THE WITNESS: Yes.

16 THE COURT: And, Mr. Bhatia, you may inquire with
17 redirect examination.

18 MR. BHATIA: Thank you.

19 Your Honor, the government offers Government Exhibit
20 150 into evidence pursuant to the stipulation.

21 THE COURT: One?

22 MR. BHATIA: 1-5-0.

23 THE COURT: Any objection?

24 MR. GELFAND: No objection, your Honor.

25 THE COURT: It is received.

Klndtem4b

Gabay - redirect

1 (Government's Exhibit 150 received in evidence)

2 MR. BHATIA: Mr. Magliocco, if we can pull up
3 Government Exhibit 150 for Mr. Gabay.

4 (Pause)

5 Just a moment, your Honor. It looks like we are --

6 THE COURT: Take your time. There we go. I saw
7 something for a moment. There we go.

8 MR. BHATIA: There we go.

9 REDIRECT EXAMINATION

10 BY MR. BHATIA:

11 Q. Mr. Gabay, you were asked a few questions about this
12 document during your direct examination -- during your
13 cross-examination, is that right?

14 A. Yes.

15 Q. This looks like an affidavit signed by Michael Haas, is
16 that right?

17 A. That is correct.

18 Q. Is he also the person who had signed the check issued to
19 Mr. Teman by Coney Management?

20 A. Not by Coney Management, by 518 West 204 Street.

21 THE COURT: I'm sorry. Just one moment.

22 I'm just going to remind Mr. Gabay, please, to keep
23 your voice up. Thank you.

24 THE WITNESS: Sure. My apologies.

25 BY MR. BHATIA:

Klndtem4b

Gabay - redirect

1 Q. You were shown Government Exhibit 146, which is a check
2 written from 518 West 204 to Mr. Teman, to GateGuard.

3 Was Mr. Haas the one who signed that check?

4 A. Yes.

5 Q. And he is the person who signed this affidavit here?

6 A. Yes.

7 THE COURT: Mr. Bhatia, before you continue, this
8 document is marked and it has been received as Government
9 Exhibit 150. The witness was questioned on a document that at
10 least in my first look appears to be identical but which was
11 marked as Defense Exhibit 29. Just for everyone's benefit, are
12 those in fact identical documents?

13 MR. BHATIA: Yes, your Honor.

14 THE COURT: Very good. Thank you.

15 BY MR. BHATIA:

16 Q. You are familiar with some of the business records of Coney
17 Management, is that right?

18 A. Yes.

19 Q. You have seen them around the office?

20 A. Yes.

21 Q. Is this a record that -- is this a common record of Coney
22 Management's?

23 A. What do you mean by "common"?

24 Q. Is this a document from Coney Management or is this a
25 document that came from Signature Bank?

Klndtem4b

Gabay - redirect

1 A. The document form came from Signature Bank.

2 Q. OK. I will direct your attention to the boxes for 5 and 6,
3 or numbers 5 and 6 below.

4 In question number 5, there is a check box, right?

5 A. Yes.

6 Q. And Mr. Haas selected, "The checks were written on check
7 forms that were not authorized by the company," is that right?

8 A. Yes.

9 Q. And in number 6, are there any check boxes?

10 A. No.

11 Q. OK. You said this is a document from Signature Bank,
12 right?

13 A. That is correct.

14 MR. BHATIA: Your Honor, no further questions.

15 THE COURT: All right. Any recross?

16 MR. GELFAND: No, your Honor.

17 THE COURT: All right. Then, Mr. Gabay, you can step
18 down. Your testimony is complete. Thank you.

19 THE WITNESS: Thank you.

20 (Witness excused)

21 THE COURT: Government, call your next witnesses.

22 MR. BHATIA: The government calls Bonnie
23 Soon-Osberger.

24 BONNIE SOON-OSBERGER,

25 called as a witness by the government,

Klndtem4b

Soon-Osberger - direct

1 having been duly sworn, testified as follows:

2 THE CLERK: Thank you. Please be seated.

3 Use the microphone as best you can, please.

4 State and spell your full name for the record.

5 THE WITNESS: My full name is Bonnie. My last name is
6 Soon-Osberger.

7 THE COURT: How do you spell your last name?

8 THE WITNESS: Sure, S-o-o-n - O-s-b-e-r-g-e-r.

9 THE COURT: All right. Good afternoon, Ms.
10 Soon-Osberger. Welcome to court.

11 THE WITNESS: Good afternoon.

12 THE COURT: I will ask you to just keep your voice up.
13 If you need, bend the microphone close to you, but just keep
14 your voice up so it can be heard in this large courtroom.

15 THE WITNESS: Sure.

16 THE COURT: Thank you.

17 Mr. Bhatia, you may inquire.

18 DIRECT EXAMINATION

19 BY MR. BHATIA:

20 Q. Ms. Soon-Osberger, where do you live?

21 A. I live on 18 Mercer Street.

22 Q. And is that in Manhattan?

23 A. That's in Manhattan, that's correct.

24 Q. And is that a cooperative building, or is it some other
25 type of building?

Klndtem4b

Soon-Osberger - direct

1 A. It IS a cooperative building.

2 Q. Are those sometimes called co-ops?

3 A. Yes, co-ops, cooperatives.

4 Q. Have you ever had a role on your co-op's board of
5 directors?

6 A. Yes.

7 Q. When?

8 A. From October 2017 to January 2019.

9 Q. And what was your role on the board of directors?

10 A. I was the treasurer for the board.

11 Q. What were some of your day-to-day responsibilities?

12 A. Maintain the expenditures, the budgets, make sure that all
13 expenditures doesn't exceed our budget. And also for that
14 particular year when we had a board meeting there was a bunch
15 of projects that was voted for, so I was to manage those
16 projects, look for the vendor, and submit bids for those
17 projects to my board members and get it approved and
18 implemented.

19 Q. Did you have responsibilities involving purchasing devices
20 for the building?

21 A. Sure. I was -- I had the responsibility to go and obtain
22 bids, look for vendors and obtain bids, submit bids for
23 approval.

24 Q. And did you also work with a management company for 18
25 Mercer?

Klndtem4b

Soon-Osberger - direct

1 A. Yes, I did. I worked with a management company.

2 Q. While you were on the board of directors, who was the
3 management company?

4 A. It was Crystal Real Estate Management.

5 Q. Who were the individuals who you worked with at Crystal
6 Real Estate Management?

7 A. I worked with Jackie Morton and I worked with Gina Hom; I
8 think that is her last name, H-o-m.

9 Q. Are you familiar with the term, 18 Mercer Equity Inc.?

10 A. Yes.

11 Q. What is 18 Mercer Equity Inc.?

12 A. That's our corporation. That's our incorporation for the
13 co-op.

14 Q. If I refer to that as 18 Mercer Equity --

15 A. Yes, you can.

16 Q. -- you will know that I am referring to the corporate
17 entity?

18 A. Yes.

19 Q. All right. In 2019 -- in 2018, 2019, who was managing the
20 bank accounts for --

21 A. It was Crystal Real Estate Management.

22 Q. And what do they do involving the finances of the company?

23 A. They pay all of our bills. They collect all of our
24 maintenance, and then from the maintenance they pay our bills.
25 And whatever project we have going on, we would submit for --

Klndtem4b

Soon-Osberger - direct

1 once we get the approval, we submit the invoice for them to
2 pay.

3 Q. What's the name -- what is the title you use to describe
4 people who live in the building?

5 A. We're shareholders and we're leasees, so the incorporation
6 required that if we buy the floor or we buy into the shares, we
7 have a right to live there, so we become a leasee to the
8 building.

9 Q. Were any shareholders or leasees authorized to sign checks
10 on behalf of 18 Mercer Equity Inc.?

11 A. No.

12 Q. Who wrote the checks for the company?

13 A. The real estate company.

14 Q. Is that Crystal Real Estate Management?

15 A. That's Crystal Real Estate, yeah, who we employ.

16 Q. They were the only ones authorized to sign for that
17 account?

18 A. Yes.

19 Q. What about board members? Were board members authorized to
20 sign?

21 A. No, we have no access to checks and we don't sign checks
22 either, access or sign checks.

23 Q. Why didn't Crystal Real Estate, as opposed to a shareholder
24 or board of director, have authority to sign for the account?

25 A. I mean, it existed before me, but it's just so that it

Klndtem4b

Soon-Osberger - direct

1 keeps the separation of duties. We have board members that
2 vote for a specific expenditures, and then from there it gets
3 submitted for approval so that there is a layer of checks and
4 balances.

5 Q. Can you elaborate on that? What are the checks and
6 balances?

7 A. Checks and balances is, like I said, there is a budget that
8 we started with, and then there is bills that goes against
9 those budgets. So once we approve it, instead of one of us
10 writing the check, we have a third party like Crystal
11 Management write the check, but we approve it before they can
12 write the check. So that is the checks-and-balances approval
13 and then issuing the checks. So that way with the checks and
14 balances, if a third party entity like a management company, if
15 they write the check, then there is a checks and balances that
16 the shareholders then get access to that, writing the check and
17 approving the issuing of the checks.

18 Q. Let's change topics for a moment.

19 Did there come a time when you met Ari Teman?

20 A. Yes, I did.

21 Q. How did you meet Mr. Teman?

22 A. I was at the cooperative, the condo cooperative trade show.

23 Q. Do you remember approximately when that was?

24 A. That was approximately October 2017.

25 Q. What were you doing at that convention?

Klndtem4b

Soon-Osberger - direct

1 A. We were approved for some projects, which is putting in a
2 new intercom, security systems, and then renovating the lobby.
3 So since I was a new board member, that was the first place
4 that the president and myself started to look for vendors.
5 That's why we attended that show.

6 Q. What was Mr. Teman doing at the convention?

7 A. He had a booth -- he had a trade show booth at the trade
8 show. So there is a lot of vendors and they have their booths,
9 and they have their product and demonstrating their products
10 there.

11 Q. Did he talk to you about any particular products at the
12 trade show?

13 A. He was showing his intercom panel, so he was demonstrating
14 it to people that came by to the booth. So my president and my
15 husband and myself, we saw it and we went by there and we
16 talked to Ari about the panel, the intercom system.

17 Q. Did there come a time when you were considering buying a
18 GateGuard intercom?

19 A. I mean, yeah. We talked to a lot of intercom companies, so
20 GateGuard was one of them that attracted to us because of the
21 smart technology. So, yes, we took away their information and
22 brochure, and then we looked at all the intercom systems that
23 we gathered information on from the show.

24 Q. What conversations, if any, did you have with Mr. Teman
25 about pricing for an intercom device?

Klndtem4b

Soon-Osberger - direct

1 A. He mentioned that to purchase a panel, the pricing, I think
2 the price point was about \$2,500 for a panel, a system, like
3 that was there, that was being displayed.

4 Q. When you spoke to him about pricing, did he mention
5 anything about a cancellation fee?

6 A. No.

7 Q. And did he mention anything about a device removal fee?

8 A. No.

9 Q. When you spoke to him about pricing, did he say anything
10 about an attorney use fee if he had to bring in an attorney in
11 a dispute?

12 A. No.

13 Q. When he spoke to you, based on your conversations with him,
14 what did you understand your agreement might be with him if you
15 purchased the device?

16 A. What it sounded like was that we would purchase that unit
17 that was there, and it has all the capability of a facial
18 recognition, it opens for delivery people, it monitored people
19 coming in and out of the building, and that they would charge a
20 service fee for the monitoring service.

21 Q. For the monitoring service.

22 Did there come a time when you saw any terms and
23 conditions on Mr. Teman's website?

24 A. Not at the show, no.

25 Q. Following the show, when you were thinking about purchasing

Klndtem4b

Soon-Osberger - direct

1 an intercom, did there come a time when you saw the terms and
2 conditions?

3 A. Yes.

4 Q. What was your reaction to them?

5 A. It was very lengthy and I went through all of it. A couple
6 of things -- three things that caught me, my attention, was
7 that there was no specific pricing on there. And then the
8 second thing was that there was going to be a 300-percentage
9 markup the next year. And then lastly I had a question also
10 about there is no mention about the annual service, what kind
11 of service it includes.

12 Q. Ms. Soon-Osberger, there is a binder to your left. Would
13 you take a look at Government Exhibits 441, 442, 443, and 431,
14 and my question is just going to be do you recognize those
15 documents?

16 A. 441, and then what else?

17 Q. It is 441, 442, 443 and 431.

18 A. 431.

19 (Pause)

20 OK.

21 Q. Do you recognize those documents?

22 A. Yes.

23 Q. As a general matter, what do they reflect?

24 A. There is the terms and conditions of GateGuard. And then
25 there is communications between Ari, myself. And then there is

Klndtem4b

Soon-Osberger - direct

1 communication between Jackie and myself, the management
2 company. And then there is a copy of the invoice.

3 MR. BHATIA: Your Honor, the government offers
4 Government Exhibits 441, 442, 443 and 431.

5 THE COURT: Is there an objection?

6 MR. DiRUZZO: None.

7 THE COURT: They are all received.

8 (Government's Exhibits 431, 441, 442, 443 received in
9 evidence)

10 BY MR. BHATIA:

11 Q. Ms. Soon-Osberger, I would like to direct your attention to
12 Government Exhibit 441.

13 MR. BHATIA: Mr. Magliocco, can you put it up on the
14 screen.

15 Q. If you can read the top three lines here.

16 A. The top three lines?

17 THE COURT: Read it slowly and loudly, please.

18 A. "Hi there. Please read these terms carefully as they
19 contain important information regarding your legal rights,
20 remedies and obligations."

21 Q. I'm sorry. Above that it says, "Terms & Conditions,
22 GateGuard Inc. last revised: November 30, 2017, 3:30 p.m.,"
23 right?

24 A. Yes.

25 Q. If we can zoom out. In the bottom right corner of this

Klndtem4b

Soon-Osberger - direct

1 page, we will zoom in there, it says "March 23, 2018" in the
2 very bottom.

3 A. Mm-hmm.

4 Q. Do you know why it says that on that document?

5 A. Likely, that is when the document was downloaded.

6 Q. Is this a document that you -- how did you come to have
7 this document?

8 A. Well, there's some transaction before this. I contacted
9 Ari after the show and told him that I was interested in the
10 product, can you send some information. And so he pointed out
11 to his website, and I went in there and looked at some videos.

12 And then I said further if we'll continue to be
13 interested, how do we proceed to the next step. And that's
14 when he said you go onto the site and then you can sign up and
15 order the product. And so I went on the site. I ordered the
16 product, looked at it.

17 Before I ordered -- well, I had to submit some sort of
18 ordering process or some sort of interest process, because
19 that's when I can get more information from him about the
20 product. So that's when there is a terms -- I asked him about
21 a contract, you know, can I see a contract, and that's when he
22 said that there is a terms and conditions in that ordering
23 process.

24 Q. So you were directed to this Terms & Conditions.

25 What was your -- you mentioned earlier that there was

Klndtem4b

Soon-Osberger - direct

1 nothing specific to 18 Mercer. Why was that significant to
2 you?

3 A. When we went to the cooperative show, there was a special
4 deal that was going on, and so that was a deal that I went and
5 that was the one that I sought out that applied to us was that
6 particular offering that he had at the show. Some of this
7 information I thought could be not pertaining to a cooperative
8 or it may be a management type of scenario. To my
9 recollection, this is what it was for, just because I realized
10 that when we went to the show we were co-op owners.

11 Q. So you thought there was, if I'm understanding you
12 correctly, there was something about this agreement that you
13 thought might not reflect -- that might make it not applicable
14 to a co-op board?

15 A. Yeah.

16 Q. What was that?

17 A. We weren't leasing the product, we were purchasing the
18 product, so the product was informed by us that we would buy
19 the panel, the unit.

20 Q. You were buying the product outright, is that right?

21 A. Yeah. That was my recollection, that it was offered to us,
22 that this is the amount for the product, to buy the product?

23 Q. In your conversations with Mr. Teman, did the topic of
24 buying the product outright come up?

25 A. Yeah. I mean he told me the price is -- this unit is

Klndtem4b

Soon-Osberger - direct

1 approximately 2500 for the -- to purchase this product, or this
2 panel, that is the price of this panel.

3 Q. To buy the product outright?

4 A. Yes.

5 Q. And did anything else -- what, if anything, did you take
6 from the fact that this was a Web page as opposed to a written
7 document -- as opposed to a memorialized document?

8 A. Well, one thing that caught my attention was that this
9 was -- it could be edited. It could be edited, so that if at
10 anytime he wants to change something, it could be changed and I
11 wouldn't know about that. There was not a process of an
12 editing version that was going to mention -- inform me that
13 there is going to be changes to that.

14 Q. Have you previously entered signed written contracts with
15 other vendors?

16 A. Yes.

17 Q. And how did those contrast with a Web page like you are
18 seeing here?

19 A. The previous contracts we have, the pricing, the terms,
20 payments, and then terms and conditions listed out attached to
21 that particular document, and then there would be signature
22 required by myself and then the vendors, so we agree on the
23 pricing and the terms and conditions.

24 Q. Ms. Soon-Osberger, I would like to direct your attention to
25 page 5 of this document and to the second full paragraph.

Klndtem4b

Soon-Osberger - direct

1 Just a little bit further down, after that. It is
2 under the header for 5, the first paragraph.

3 A. Yes.

4 Q. So this paragraph here is labeled price of -- there is a
5 reference to pricing in this paragraph, right?

6 A. Mm-hmm.

7 Q. Had you spoken to Mr. Teman about the price of the device
8 you were purchasing?

9 A. At the show he told me an approximate amount. So I asked
10 him for the specific amount, because when we do bidding, I have
11 to have exact amount. So I asked him to send me the pricing.

12 Q. Did he send you a price?

13 A. He sent me an invoice.

14 Q. And on that invoice it listed a specific price?

15 A. Yeah, it has a price. I think it is 431. Or something
16 like that. Yes.

17 Q. Did you believe that there were additional payment terms in
18 addition to the price that you were paying?

19 A. No. Because he told me he wouldn't submit the invoice, it
20 was just the amount, the installation, and then the service
21 fee, which he billed me in advance for an entire year.

22 Q. So you read this agreement -- sorry. You read the Terms &
23 Conditions page, right?

24 A. Yes.

25 Q. And there is -- you can see here in the middle of this

Klndtem4b

Soon-Osberger - direct

1 paragraph, there is -- it says, "The applicable fees shall be
2 as stipulated in the price list made available by GateGuard on
3 the site from time to time and subject to the additional
4 payment terms stipulated out," and then there is a Web page.

5 Did you click on that link?

6 A. I didn't because the pricing was what he mentioned to me at
7 the show. That's why I contacted him and asked him to give me
8 the specific pricing for our deal or for what we discussed at
9 the show, to send me a price that was told to me.

10 Q. Did there ever come a time when you saw an agreement that
11 referenced a 30-year contract with Mr. Teman?

12 A. No.

13 Q. Did there ever come a time when you saw a document that
14 would allow Mr. Teman to write a check on behalf of 18 Mercer?

15 A. No.

16 Q. Would either of those terms have stood out in your mind?

17 A. If I read it, absolutely. Absolutely.

18 Q. If you had read those terms, what would your reaction have
19 been?

20 A. I would not agree to that. It's not a practice that our
21 co-op would abide by. We wouldn't do that. The only people
22 that can write checks is our management, approved by the board.
23 All the invoices are submitted, approved, and then handed over
24 to the management to write the check.

25 Q. If you had seen either of those provisions, what, if

Klndtem4b

Soon-Osberger - direct

1 anything, would you have said to Mr. Teman?

2 A. I'm not in a position to do something like that. I
3 couldn't be able to sign something like that or approve
4 something like that.

5 Q. I would like to direct your attention to page 3 of this
6 document. It is an email message beginning on page 3 and
7 continuing onto page 4.

8 I'm sorry. This is Government Exhibit 442.

9 THE COURT: We are now in 442?

10 MR. BHATIA: Yes. I am now in Government Exhibit 442.

11 It starts on this page and it goes onto the next page.

12 I'm sorry. I am going to change one more time. This
13 is a document on page 5 of the same --

14 THE COURT: The same document on page 5?

15 MR. BHATIA: Government Exhibit 442 and it is page 5,
16 and it is this message on the screen.

17 Q. Ms. Soon-Osberger, did there come a time when you spoke --
18 when you messaged with Mr. Teman about your thoughts on the
19 terms and conditions?

20 A. Yes.

21 Q. And is this before or after you purchased an intercom
22 device from him?

23 A. This was before.

24 Q. This was before?

25 A. Yes.

Klndtem4b

Soon-Osberger - direct

1 Q. And in this message, you're including a couple clauses that
2 you have questions about, is that right?

3 A. Yes.

4 Q. And did you -- if you had -- you testified previously that
5 you never saw a provision about -- you did not see a provision
6 about allowing him to draw checks from your account.

7 A. That's true.

8 Q. If you had seen that, would that have been something you
9 would have included in this message?

10 A. Absolutely. I just don't have authority to allow people to
11 write checks; I don't have authority for that, so, yes.

12 Q. If you had seen a provision requiring your company to pay
13 fees for 30 years, is that something that you might have raised
14 with Mr. Teman?

15 A. Yes.

16 Q. As a general matter, what are you relating to Mr. Teman in
17 this message?

18 A. These are points that I have concern about the terms and
19 conditions as it applied to us.

20 Q. These are the terms and conditions that you testified about
21 a minute ago?

22 THE COURT: A little louder, now, counsel, for the
23 members of the jury, please.

24 Q. You are referring to the terms and conditions that you
25 testified about a moment ago, right?

Klndtem4b

Soon-Osberger - direct

1 A. Yes.

2 Q. And I would now like to direct your attention to the email
3 message now beginning on page 3 and continuing onto page 4.

4 At the bottom of this page it says: "On Thursday,
5 March 29, 2018 at 2:12 p.m. Ari Teman wrote: Hi, Bonnie."

6 And on the next page, he has some text.

7 A. Mm-hmm.

8 Q. What was Mr. Teman relating to you here?

9 A. Realizing we were asking for some references. The bottom
10 is thanking him for the condition -- addressing the concerns.

11 THE COURT: Sorry. I don't think the witness is
12 looking at the document on the screen. She is referring to a
13 different part of this document. Please direct her attention.

14 BY MR. BHATIA:

15 Q. Ms. Soon-Osberger, you can look at it on the screen here
16 just so that we are all on the same page.

17 A. OK.

18 Q. Is he responding to your comments from below?

19 A. Mm-hmm.

20 Q. And what was your reaction on seeing his comments?

21 A. Well, he was addressing, adjusting, and directing the items
22 that I had about -- the concerns I have, so this is the reply,
23 his reply.

24 Q. And was one of the terms that you had questions about
25 relating to increasing prices?

Klndtem4b

Soon-Osberger - direct

1 A. Yes.

2 Q. What was in the terms and conditions you had seen about
3 raising prices?

4 A. He was going to increase -- he would increase over
5 300 percent next year and the following year, and point one is
6 addressing that.

7 THE COURT: Ms. Soon-Osberger, if you could speak into
8 the microphone, please?

9 A. The point one is addressing, replying to the 300 percent
10 increase for the following year after we signed up with them.
11 So, that's addressing that.

12 Q. Were you generally -- were you satisfied with Mr. Teman's
13 responses?

14 A. Yeah. Yeah.

15 Q. OK. And I'm going to direct your attention to an email
16 message on page 6 of this document. It is at the bottom of the
17 page.

18 THE COURT: Counsel, page 6?

19 MR. BHATIA: Page 6.

20 THE COURT: Of 442?

21 On the version you have given the Court, it just has a
22 couple of address tabs.

23 MR. BHATIA: One moment, your Honor.

24 (Pause)

25 BY MR. BHATIA:

Klndtem4b

Soon-Osberger - direct

1 Q. Ms. Soon-Osberger, you email respond -- did you respond to
2 Mr. Teman and his comments to you?

3 A. Yes, I did.

4 Q. Did you tell him that you agreed -- well...

5 A. Yes.

6 THE COURT: I'm sorry. There is no question. I think
7 counsel retracted the question.

8 Q. Turn to page 3 of this document in the middle of the page.

9 A. Mm-hmm.

10 Q. You write to him, and we'll pull it up, you write -- I'll
11 give the jury a moment to read this.

12 (Pause)

13 A. Did you want me to read it?

14 THE COURT: There is no question pending.

15 Q. No, nothing for you to read.

16 (Pause)

17 The first line here, you say: "thank you so much for
18 your replies and you have addressed our concerns related to the
19 terms and conditions."

20 When you wrote that, were you agreeing to a provision
21 about -- that would allow Mr. Teman to draw checks from your
22 account?

23 A. No.

24 Q. Were you agreeing to a provision that would require you to
25 pay monthly fees for 30 years?

Klndtem4b

Soon-Osberger - direct

1 A. No.

2 Q. And were you at that point agreeing to an \$18,000 device
3 removal fee?

4 A. No.

5 Q. At that point, had you heard of a device removal fee?

6 A. No.

7 Q. You had testified earlier about owning the device. How did
8 that affect your view of whether there should be a device
9 removal fee?

10 A. If I owned the device, I have the option to not use the
11 device if the device doesn't work for me, so I wouldn't think
12 that there is any removal of the device -- unless I hired him
13 specifically to remove the device, then I would inquire with
14 him the pricing of that service. If there is a removal fee, I
15 would ask for the amount of that removal fee, if that service
16 was deemed necessary.

17 Q. Did there come a time when you agreed to actually buy the
18 device?

19 A. When I -- when I paid for that invoice, the 2,500, that was
20 my device. Because there is a point that I asked him the terms
21 and conditions about the leasing. I concerned with leasing.
22 He said it was a tax loophole, to my understanding, so --

23 MR. BHATIA: If we can publish Government Exhibit 431
24 and page 3 of that document. We can talk about the invoice.

25 A. Mm-hmm.

Klndtem4b

Soon-Osberger - direct

1 Q. If we can look at the line items listed on this invoice.

2 A. Mm-hmm.

3 Q. The first item here, it's a little bit hard to read, but it
4 says, "GateGuard 2.0 panel, cooperative show price." And it
5 lists the unit cost of \$2,499.

6 What did you believe you were buying for \$2,499?

7 A. The panel, the intercom system. That was exactly what it
8 says, cooperative show price; when we talked about it at the
9 show, it was the purchase of this unit.

10 Q. What role did the actual price of this device play in your
11 decision to purchase it?

12 A. What's that?

13 Q. This may not be an obvious question, but how did the price
14 of \$2,499 affect your decision to buy it or not?

15 A. We compared to another system that was compared to this and
16 it was like a \$5,000 system, so we felt that this was -- this
17 is \$2,500 and we own it. So if something happened, it's
18 \$2,500, so we thought that this is the right decision to go
19 with this unit.

20 Q. When you bought this, did you believe you were buying the
21 device outright?

22 A. Yes.

23 Q. Did you relay this invoice to Crystal Real Estate
24 Management?

25 A. Yes.

Klndtem4b

Soon-Osberger - direct

1 Q. And what happened next?

2 A. They proceed to pay the invoice for this amount. Of
3 course, this was submitted to our board for approval to pay.
4 So then management have this invoice to pay based on approval
5 by our board members.

6 Q. Did the board members approve that?

7 A. Yes.

8 Q. Then you relayed it to Crystal Real Estate?

9 A. To -- yeah.

10 Q. Did there come a time when the intercom was installed in
11 the building?

12 A. Yes.

13 Q. What was your experience with the intercom?

14 A. From day one, it was -- it was surprising because when this
15 install was done, he removed our old system and he had left a
16 hole but he put his system on top of our mailbox. It kind of
17 stuck out, and it was very low, so it didn't make sense to --
18 anybody couldn't see the person who is coming to ring the
19 doorbell, you couldn't see the face because it really is that
20 low. And Ari said that it was disability approval, it has to
21 be at that height.

22 I had a couple of concerns because it doesn't look
23 like it could capture the facial, and also it is right on top
24 of our mailbox so our mail -- our mail person can't get into
25 the key box, and that day it didn't work. So, I had concerns

Klndtem4b

Soon-Osberger - direct

1 about how we are going to get in and out of the building.

2 Q. Did the GateGuard device work as you expected it to?

3 A. No.

4 Q. Did you relay those concerns to Mr. Teman?

5 A. Yes.

6 Q. What was his reaction when you told him about your concerns
7 about the device?

8 A. He mentioned something about the Internet access, that the
9 Internet was not the appropriate Internet service for the
10 system.

11 Q. And ultimately was there a time that you decided it was
12 time to move on from the GateGuard device?

13 A. Yeah, after a lengthy time, after we tried multiple -- two
14 different Internet services, it still didn't work, and so
15 finally we had to just replace the system, because it was from
16 August to January we had no access -- the mailman had no
17 access, our delivery people had no access, our gas had no
18 access. We had to come down from the building to receive
19 anybody that needed to come into the building. So we worked
20 with them as long as we can, but just after a length of time,
21 everyone in the building just got impatient and then we decided
22 we have to move on.

23 Q. What happened -- did there come a time when you relayed
24 that information to Mr. Teman, that you needed to move on?

25 A. Yes, I did.

Klndtem4b

Soon-Osberger - direct

1 Q. How did he react?

2 THE COURT: Back up. How was it conveyed, please?

3 Q. How was it conveyed to Mr. Teman?

4 A. By email. I mentioned to him that it's not working; the
5 system, we plug it in, it's not working. We tried the IP
6 addresses he was asking, just multiple requests he had related
7 to our services and each time it just didn't work. And so at
8 one point I said we need to move on, we do need to have the
9 system removed, and that's when he was sending an email that we
10 would be charged. And in that one email he said he would put a
11 lien on the building.

12 Q. I would like to direct your attention to Government Exhibit
13 443, and I would like to direct your attention to an email
14 message at the bottom of page 6 and continuing onto page 7.

15 I'm sorry. The bottom of page 5 and continuing on
16 page 6.

17 Who is this email from?

18 A. It was from Ari.

19 THE COURT: Just one moment. I am trying to find it.

20 (Pause)

21 Counsel, you said this is Exhibit 44?

22 MR. BHATIA: 443.

23 THE COURT: One moment. Sorry. Apologies.

24 (Pause)

25 Yes. Go ahead.

Klndtem4b

Soon-Osberger - direct

1 BY MR. BHATIA:

2 Q. Ms. Soon-Osberger, this is an email from Ari Teman and it's
3 to Jackie Monzon, Shelley Pecot and you, is that right?

4 A. Yes.

5 Q. And in the first sentence, he writes: "As a reminder, you
6 are not allowed to touch or move our device and there's an
7 \$18,000 fine for removing it."

8 What was your reaction upon reading that?

9 A. I was shocked.

10 Q. Why were you shocked?

11 A. Why would we be fined --

12 THE COURT: Sorry. Start again. Please speak into
13 the microphone.

14 A. I was shocked because that we're going to be charged an
15 \$18,000 fine for removing a product that doesn't work.

16 Q. How did the \$18,000 fine compare to the price of the device
17 itself?

18 A. The panel is 2,500, which is what we purchased. So this
19 \$18,000 doesn't make any -- doesn't make any sense. It is --
20 it's -- I mean, to me it was a bullying type of scenario when
21 someone sends an email like that to me.

22 Q. And in the next line, he says, "We will enforce the
23 contract, and we will remove anything placed on the building
24 against it and restore service."

25 How did you react to the references to removing

Klndtem4b

Soon-Osberger - direct

1 anything placed on the building against it and restoring
2 service?

3 A. Well, that's exactly what I said. It's why would he remove
4 something that we were going to implement, something that
5 works, replace something that we much needed. Again, we left
6 that system many months and tried to work with him. We have
7 Verizon DSL. We had Spectrum put in. We spent a lot of money
8 on different services, Internet services -- Spectrum Internet
9 services just so we can help to make the system work and it
10 never worked.

11 Q. Outside of this email, were there any instances where
12 Mr. Teman threatened to sue -- what instances, if any, were
13 there where Mr. Teman threatened to sue you or 18 Mercer?

14 A. I believe there is another email that has I'm going to
15 place a lien on your building if this is -- if we are going to
16 remove the system.

17 Q. What would be the significance of a lien on your building
18 at 18 Mercer Street?

19 A. What I understand a lien is, that it would put -- you can't
20 move any money in or out, you can't make any transaction for
21 the co-operation.

22 Q. Did there ever come a time when Mr. Teman threatened to sue
23 you or other members of the board?

24 A. I think that -- I recollect -- it is my recollection that
25 there was other emails that he had threatened us if we

Klndtem4b

Soon-Osberger - cross

1 didn't -- if we were to remove this system.

2 Q. Ms. Soon-Osberger, I would now like to direct your
3 attention to Government Exhibit 202.

4 At the top of this page, it says, "18 Mercer Equity
5 Inc."

6 Is that the corporation that owns the building at 18
7 Mercer Street?

8 A. Mm-hmm.

9 Q. And this is a check for \$18,000, dated March 28, 2019.

10 Did you authorize Mr. Teman to deposit this check?

11 A. Absolutely not.

12 Q. Did you authorize anyone else to deposit a check for
13 \$18,000 to GateGuard Inc.?

14 A. Absolutely not.

15 Q. In the bottom left corner there is a reference to "Device
16 Removal Fee." Had you ever agreed to an \$18,000 device removal
17 fee?

18 A. Absolutely not.

19 MR. BHATIA: Your Honor, no further questions.

20 THE COURT: All right. Cross-examination.

21 MR. DiRUZZO: Thank you, your Honor.

22 THE COURT: Yes. Mr. DiRuzzo, you may inquire.

23 CROSS-EXAMINATION

24 BY MR. DiRUZZO:

25 Q. Good afternoon, ma'am.

Klndtem4b

Soon-Osberger - cross

1 A. Good afternoon.

2 Q. I'm going to ask you a series of questions. If I go too
3 fast, don't speak loud enough, or you don't understand a
4 question, just let me know. I will either repeat or rephrase
5 the question. OK?

6 A. Yep.

7 Q. Ma'am, we've never talked before, correct?

8 A. No.

9 Q. And let me start with trying to get a little background
10 here.

11 I have some emails of yours. After your name there is
12 an acronym, "PMP"?

13 A. Yes.

14 Q. What is that, ma'am?

15 A. Project management professional.

16 Q. And are you a project manager, is that your occupation?

17 A. It was.

18 Q. So would managing projects like talking to vendors and
19 doing modifications to a building, that would be something that
20 you are used to doing?

21 A. No. I manage business solution teams. So what I do is I
22 work for IBM. We go and sought out solutions for a company
23 that does have issues. And then what we do is locate the
24 system, the process, or the equipment, the technology. And
25 once we identify where the problem area is, we build a team

Klndtem4b

Soon-Osberger - cross

1 to -- we hire a team and build a team to solve those issues,
2 whether it is in the process people or equipment or technology.

3 Q. OK. So you are pretty comfortable with modern technology;
4 isn't that fair to say?

5 A. Yeah. Yeah.

6 Q. OK. So, now, in your direct testimony, you mentioned that
7 you were the treasurer for your co-op board, is that correct?

8 A. Mm-hmm. Mm-hmm.

9 Q. And part of your duty is, of course, representing the
10 board, but you also represent everyone in the co-op
11 collectively, right?

12 A. Yeah.

13 Q. And it is your job to make sure that you do things that are
14 in the best interest of the co-op, correct?

15 A. That's right.

16 Q. And in that vein, you went to -- if I get it correctly, you
17 went to a trade show with other individuals to try to look at
18 some intercom systems; that was your testimony?

19 A. Mm-hmm. Mm-hmm.

20 Q. And you testified on direct that what attracted you, at
21 least in part, to Mr. Teman's GateGuard system was that it had
22 some cutting-edge technology; is that fair to say?

23 A. Yes.

24 Q. Could you explain to the jury what exactly was that
25 cutting-edge technology that differentiated it from other

Klndtem4b

Soon-Osberger - cross

1 systems in the same space?

2 A. For sure. The system had face recognition, and that was
3 surprising to me because that was very cutting edge in America,
4 anyway. We had attended a trade show, it was very popular, and
5 I recognized what it is. So I went over to see this technology
6 that has face recognition. So that attracted me along with
7 having the access to call your phone whenever somebody
8 accessed, like a delivery person or a guest. So those type of
9 functionalities was very attractive.

10 Q. OK. So you would agree with my characterization, that was
11 an integrated hardware and software platform; does that sound
12 right to you?

13 A. Yes, I think so because you need Internet services and,
14 yeah.

15 Q. And as a result, Mr. Teman's system, it collected data, and
16 that data would be available to the Mercer co-op board,
17 correct?

18 A. Mm-hmm. Mm-hmm.

19 Q. And that was part of the appeal of the GateGuard system was
20 the ability of the system to, in essence, collect this data and
21 make it available upon demand, correct?

22 A. Yeah. Most of the technology, it collects data, yeah.

23 Q. And this -- the interface was a Web-based interface; you
24 would agree with me?

25 A. Yes.

Klndtem4b

Soon-Osberger - cross

1 Q. You had to go on the Internet, your had to go on your
2 browser, Firefox, put in the website, go on the login password
3 in order to get into the GateGuard website, correct?

4 A. Yeah -- well, more like a mobile device that we were
5 attracted to. You can use a mobile device to unlock the door
6 or to see somebody who are in front of your door, yeah.

7 Q. To be a little more specific, not so much the individuals
8 that have a co-op would be able to let someone in via mobile
9 device. I am talking for the co-op board, the management, that
10 it would be able to login through the GateGuard website,
11 correct, in order to see what's going on?

12 A. That was up to the management. The management would have
13 access to do that.

14 Q. OK. But the management corporation or business, Crystal,
15 that you referred to, those are the ones that effectively did
16 it on behalf of the co-op board?

17 A. Yeah. What we were interested in if we wanted information
18 about who came in and out of the building or data, then, yes,
19 we would go to them for that information.

20 Q. Now, you also testified that one of the things that
21 attracted you was the price. You said the price was -- this is
22 my characterization not yours -- it was half the price of the
23 next competitor? Did you say Mr. Teman's was 2,500 and the
24 next competitor was 5,000?

25 A. I think it was like somewhere around 5,000, yes.

Klndtem4b

Soon-Osberger - cross

1 Q. So that was a pretty good deal?

2 A. I think so, yes.

3 Q. Now, you knew that, when you were getting this deal, that
4 in order for the device to work, it had to be connected to the
5 Internet and it had to have service for a long period of time.
6 In other words, you aren't just going to buy the device,
7 install it yourself, and expect it to work because it wouldn't;
8 you would agree with that?

9 A. Of course. Of course.

10 Q. In other words, you would have, or your board would have an
11 ongoing relationship with GateGuard not only once the device
12 was installed but days, months, years in the future in order to
13 make sure that the device connectivity and activity still
14 worked?

15 A. If they were -- if they were to continue service on an
16 ongoing basis for the system, yes.

17 Q. Now, when you talked to Mr. Teman at the trade show, he
18 pointed you to the GateGuard website, is that correct?

19 A. I think he said you can go in there and find more
20 information, yes.

21 Q. And I assume -- correct me if I am wrong -- you actually
22 went to the GateGuard website and looked around a little bit,
23 correct?

24 A. When he pointed me to it, yes, I went in to look at the
25 Channel 5 interview that took place.

Klndtem4b

Soon-Osberger - cross

1 Q. And that was the video that you mentioned on your direct
2 examination, was it?

3 A. I took a look at it, yeah. Yes.

4 Q. And part of the -- now, let's talk -- I want to switch
5 gears a little bit and talk about the terms and conditions.

6 Showing you what's been marked as and entered into
7 evidence as Government Exhibit 441.

8 And this is the document that we were just talking
9 about not too long ago on direct examination, correct?

10 A. Mm-hmm. Mm-hmm.

11 Q. You would admit, this is a fairly long -- a fairly long and
12 involved, 22-page document, correct, ma'am?

13 A. Mm-hmm.

14 Q. With a lot of, for lack of better terms, like contract
15 language, legalese, correct?

16 A. Mm-hmm.

17 Q. And you actually -- you yourself, you looked at and you
18 reviewed this document, correct?

19 A. Mm-hmm.

20 Q. And --

21 THE COURT: Sorry. Just try and answer questions
22 "yes" or "no."

23 A. Yes. Sorry. Yes.

24 Q. And there were other members of your co-op board that also
25 looked at this document, correct?

Klndtem4b

Soon-Osberger - cross

1 A. Yes.

2 Q. And could you tell the jury who those individuals were?

3 A. The president, Stephanie Phillips.

4 Q. Anyone else?

5 A. No, but we did make it available for all the board members.

6 Q. And for the jury's edification, could you tell the jury who
7 the other board members were?

8 A. The other board member at that time was Roberta -- I forgot
9 her last name, she is an Italian lady. She just moved in. And
10 then it was Margaret Cummings, and then -- who else was that on
11 that board? Phillips, me --

12 Q. If you can't remember, ma'am, that is fine.

13 A. Yeah, there is only five board members.

14 Q. So there is five board members?

15 A. Yes.

16 Q. OK I assume -- correct me if I am wrong -- that in order
17 for the board to approve something, you probably need three out
18 of five board members to agree?

19 A. That's correct. We sent out -- usually we sent out
20 documents for them to look at and then we ask for approval.

21 Q. OK. Now, ma'am, I'm going to flip to -- ma'am, can you see
22 Section 5, "Orders"?

23 THE COURT: Do you want this published to the jury?

24 MR. DiRUZZO: Yes, please, your Honor. Sorry. It has
25 been admitted into evidence.

Klndtem4b

Soon-Osberger - cross

1 Q. OK. Ma'am, do you see that there?

2 A. Mm-hmm.

3 Q. So this is the orders and fees pricing quotes. Do you see
4 that section there?

5 A. That's right.

6 Q. And, now, part of your discussion on direct examination was
7 that you took issue with this little portion right here, about
8 talking about raising the monthly fees of a hundred percent per
9 year but no more than 350 percent. Do you see that there,
10 ma'am?

11 A. Mm-hmm.

12 Q. So that's a portion of at least the terms and conditions
13 that you or the board collectively took issue with; you would
14 agree with that?

15 A. Mm-hmm. Mm-hmm.

16 Q. But it says right here that this document is subject to the
17 additional payment terms stipulated at, and there is a URL. Do
18 you see that there, ma'am?

19 A. Mm-hmm. Mm-hmm.

20 Q. And, ma'am, is it your testimony that you did not click on
21 that URL?

22 A. We have to collect information for bidders. We need either
23 a contract that we can sign with the other party or specific
24 pricing. So, this doesn't give me all that information. He
25 could have a generic, default pricing for whatever he's

Klndtem4b

Soon-Osberger - cross

1 offering, but I need -- I asked Ari for pricing so that I can
2 have specific -- I can't just submit this to my board. I have
3 to have the exact pricing that he gives me so that I can line
4 up, which I did after he gave me the invoice, to line up with
5 other vendors the costs of all the specific bids. So clicking
6 on that doesn't give me information directly that I can submit
7 for board approval.

8 Q. I understand, ma'am, but my question is just a little more
9 direct and simple.

10 A. Mm-hmm.

11 Q. Did you click on that URL?

12 A. I did not.

13 Q. And as the next follow up, you could have, though, if you
14 wanted to? You had the ability, correct?

15 A. I could. And I could, yes, but --

16 Q. But you chose not to?

17 A. Not that I choose not to, but the way we do our job,
18 bidding for a job, is a pricing and a signed contract and --

19 Q. I understand, ma'am, but --

20 THE COURT: Let the witness finish her answer, please.

21 A. Yes. So I need exact pricing, and the contract and the
22 pricing, especially the pricing to put together the bid, and
23 that's when Ari gave me that particular invoice, that is what
24 we are approving. That's what we're paying. That's our
25 pricing.

Klndtem4b

Soon-Osberger - cross

1 Q. Ma'am, I understand. But you would agree with me that
2 Mr. Teman is not on your board and wasn't privy to the internal
3 rules and mechanisms of your co-op board; you would agree with
4 that?

5 A. I agree, but he knew that I was trying to collect prices
6 for bids to make a determination to move forward with the
7 intercom system.

8 Q. Ma'am, during your course of interaction with Mr. Teman,
9 you reviewed the terms and conditions and submitted it to the
10 board for the board's approval, which the board did approve,
11 correct?

12 A. Mm-hmm.

13 THE COURT: One moment.

14 Counsel, I think there is a compound question. You
15 submitted -- you said she submitted the terms and conditions
16 and you submitted it for approval. Break those down into
17 separate questions so it is clear what you were asking was
18 submitted, please.

19 MR. DiRUZZO: Sure.

20 BY MR. DiRUZZO:

21 Q. Ma'am, you submitted the terms and conditions to the board,
22 correct?

23 A. Yes.

24 Q. And the board approved the terms and conditions, correct?

25 A. They approved the contract and they approved the pricing,

Klndtem4b

Soon-Osberger - cross

1 yes.

2 Q. I want to be very specific with my terminology here now.
3 When I say "terms and conditions," I'm referring to this
4 document right here, which is Government Exhibit 441.

5 A. So what we do is we submit the bids and we submit whatever
6 documents that we have, which is these documents included, for
7 the board to review, and then we take a vote and we have the
8 majority to move forward.

9 Q. Correct me if I am wrong, but I don't think there is a
10 dispute, this is the document, Government Exhibit 441, that was
11 submitted to your board?

12 A. That's right.

13 Q. And that the board approved?

14 A. That's right.

15 (Continued on next page)

K1NVTEM5

Soon-Osberger - cross

1 BY MR. DiRUZZO:

2 Q. Ma'am, I'm showing you what's been marked as -- admitted in
3 evidence, Government Exhibit 442. Starting at the top, ma'am,
4 that right there, that's your email address; correct?

5 A. That's right.

6 Q. And then you say here that: Ari, we were reviewing your
7 terms and conditions, and have inquiries regarding the
8 following. And then it goes on.

9 That's your email to Mr. Teman; correct?

10 A. That's right.

11 Q. And this portion right here, this first part in quotes,
12 about the 100 percent per year and no more than 350 percent,
13 that language actually comes from Section 5 of the terms and
14 conditions, which is Government Exhibit 441. You would agree
15 with me that that's where that language comes from?

16 A. Mm-hmm. Mm-hmm.

17 Q. Now, going down a little farther, this language right
18 here -- and I'm not going to read it all, but has a bunch of
19 hyperlinks in it to at least the GateGuard and the related
20 company property panel websites. Do you see that there, ma'am?

21 A. Number --

22 THE COURT: Please answer yes or no, kindly, as
23 opposed to "mm-hmm."

24 A. I was just going to ask, is this --

25 THE COURT: One moment.

K1NVTEM5

Soon-Osberger - cross

1 A. Okay. Okay. That's fine.

2 THE COURT: Just for the record, counsel has circled
3 the paragraph that begins, "You agree that GateGuard will run."

4 Go ahead, counsel.

5 BY MR. DiRUZZO:

6 Q. So, ma'am, that's -- you cut-and-pasted that portion of the
7 terms and conditions into your email that you sent Mr. Teman;
8 correct?

9 A. That's right.

10 Q. And in that portion that you cut-and-pasted into your email
11 included hyperlinks also from the terms and conditions;
12 correct?

13 A. Mm-hmm.

14 Q. Because you had concerns with this section and the
15 hyperlinks that this section incorporates; correct?

16 THE COURT: Sorry. We need an answer.

17 A. I was referring to the monthly fee here.

18 Q. I understand that, ma'am. But this -- this paragraph that
19 you put in quotes, you did that; correct?

20 A. Yes.

21 Q. Because you had concerns about that language; correct?

22 A. About the monthly fees, yes.

23 Q. I'm not asking about the monthly fees. I'm asking about --

24 A. You're asking if I accept the entirety of this paragraph
25 when I paste that on there and had that increase.

K1NVTEM5

Soon-Osberger - cross

1 Q. I'm asking you did that because you had concerns about that
2 language that you personally quoted and pasted into your email?

3 A. Yes, I have -- I have concern about that, that -- yes, that
4 paragraph or the -- yes.

5 Q. Then you would also agree with me that Mr. Teman
6 responded -- and it goes on to the next page. And he responded
7 to you and asked at the very bottom, "Does that help?" You
8 would agree with that, right, ma'am?

9 A. Yes, yes.

10 Q. To which you replied that he addressed your concerns
11 related to the terms and conditions; correct?

12 A. Yup, related to those topics of the terms and conditions,
13 yes.

14 Q. So you would agree that Mr. Teman was responsive to your
15 emails and the concerns that you expressed to him?

16 A. Yes.

17 THE COURT: Mr. DiRuzzo, I'm looking for a natural
18 break for our mid-afternoon -- natural point for our
19 mid-afternoon break. Is this a good point or do you --

20 MR. DIRUZZO: This is fine, Judge.

21 THE COURT: All right. Ladies and gentlemen, I'm
22 informed by Mr. Smallman that the mid-afternoon coffee, etc.,
23 has arrived. So we'll take a 15-minute recess. In 15 minutes,
24 Mr. Smallman will come get you.

25 As always, please don't discuss the case.

K1NVTEM5

Soon-Osberger - cross

1 (Jury not present)

2 THE COURT: Okay. Anyone have anything to raise
3 before we take the break?

4 MR. BHATIA: No.

5 THE COURT: All right. I'll see you just a few
6 moments before 15 minutes. Have a good break, everyone.

7 I'll need the witness back in the box before the jury
8 comes out.

9 (Recess)

10 THE COURT: Let's get the witness in the box and let's
11 get the jury. Welcome back, Mr. Imperatore.

12 MR. IMPERATORE: Yes, your Honor. Thank you.

13 THE COURT: Mr. DiRuzzo, for planning purposes, how
14 much further on cross, approximately?

15 MR. DiRUZZO: Best guess, 10 to 15.

16 THE COURT: Very good. Thank you.

17 (Jury present)

18 THE COURT: Ms. Soon-Osberger, I'll remind you that
19 you are still under oath.

20 And Mr. DiRuzzo, you may inquire.

21 BY MR. DiRUZZO:

22 Q. Okay, ma'am. I'm going to shift gears a little bit. I'm
23 going to turn your attention to -- show this to the jury and to
24 the witness, Government Exhibit 431, which is already in
25 evidence.

K1NVTEM5

Soon-Osberger - cross

1 And ma'am, this is an email from you to board, and cc
2 Caroline, Gina, and Jackie, with the subject of Invoice for the
3 New Intercom System. So this is an email that you sent to
4 those individuals; correct?

5 A. Mm-hmm.

6 THE COURT: Sorry. You need to answer yes or no and
7 speak into the microphone.

8 THE WITNESS: I'm sorry. Yes.

9 Q. And that listed out particularly here the one-year annual
10 amount, which is just under \$600; correct?

11 A. That's correct. Yes.

12 Q. And that information that you relayed in the body of your
13 email -- I know it's probably a little difficult for everyone
14 to see right here, but this is the invoice that you receive
15 from Mr. Teman's business GateGuard; correct?

16 A. It look different from the other invoice.

17 Q. It looks different. How does it look different, ma'am?
18 We'll start off --

19 THE COURT: I think, Mr. DiRuzzo, it would be helpful
20 if you -- if I'm correct, you've just gone two pages beyond the
21 email you showed her in the same exhibit. If you identify it
22 that way, we can speed things along. Why don't you have her
23 flip through that or something.

24 MR. DiRUZZO: Sure.

25 THE COURT: Rather than detaining us.

K1NVTEM5

Soon-Osberger - cross

1 MR. DiRUZZO: Sure.

2 Q. Take a look at the binder, Government Exhibit 431. It
3 should be a three-page document.

4 So, ma'am, this document which is on the screen right
5 now, the document that you have in the binder on your lap in
6 paper form?

7 A. It's missing the information. I assume it's just not on
8 here, displayed here.

9 Q. Okay. But this document, is that in the binder that you
10 have?

11 A. It's just missing the information, but, yeah, I think it's
12 the same thing. Right?

13 THE COURT: Sorry. First of all, please keep your
14 voice up.

15 What do you mean by it's missing the information?
16 This document is the attachment to the email that counsel was
17 asking you about.

18 THE WITNESS: Yeah, it's just -- it's just information
19 here that's not clear on the screen. I just want to make sure
20 that it's a different document, so I just want to make sure.

21 THE COURT: I see. All right.

22 Then let me ask defense counsel just to show the
23 witness the entire document. Her point is that only a portion
24 of the invoice is being portrayed on the screen. So show her
25 the entire thing.

K1NVTEM5

Soon-Osberger - cross

1 MR. DiRUZZO: I understand.

2 THE COURT: I'm just trying to move us past this
3 confusion.

4 MR. DiRUZZO: Okay.

5 BY MR. DiRUZZO:

6 Q. Is that better ma'am?

7 A. Yup.

8 Q. Okay. So now, ma'am, so let's talk about this portion
9 right here. First year paid up front, that's basically \$50 a
10 month for a year, just under \$600; correct?

11 A. That's -- yes.

12 Q. And the reason that your co-op board was billed per years
13 worth \$50 a month is because there was going to be reoccurring
14 fees that the board -- for your co-op building was going to be
15 responsible for, to use the functionality of the GateGuard
16 system, the device, for the first year, and then you would have
17 to pay for it again for the second year and the third year;
18 correct?

19 A. Like most monitoring and hosting services, if we decide to
20 go with -- continue that type of monitoring services or that
21 particular equipment, then, yes, we renew another year.

22 Q. Okay. Now, ma'am, I'm going to switch gears again to a
23 little discussion about Crystal Management.

24 So based on your direct testimony, Crystal Management
25 was the management company that was in charge of the building,

K1NVTEM5

Soon-Osberger - cross

1 for lack of a better term?

2 A. Yes.

3 Q. And like all management companies, I assume Crystal
4 collected the co-op or the HOA fees from everyone on a monthly
5 basis?

6 A. Yes.

7 Q. And then Crystal would dispense money to the vendors,
8 whoever the co-op would have an expense to?

9 A. Yes.

10 Q. So my understanding on your direct testimony was that the
11 condo or the co-op board itself didn't write checks; instead,
12 it directed Crystal on its behalf to issue checks to pay bills
13 for your co-op board. Is my understanding correct?

14 A. Yes.

15 Q. So, in other words, you couldn't write a check off of
16 whatever bank account, because the co-op board didn't actually
17 have a bank account in its own name. Is that my understanding?

18 A. It has checking account its own name.

19 Q. Okay. So it had a checking account in its own name, but
20 Crystal wrote checks off of the board's bank account, or did
21 Crystal write checks off of Crystal's own bank account? If you
22 could clarify that for us.

23 A. What my recollection is that we approve for bank account to
24 be opened on our behalf when we transition over to Crystal so
25 we have our own bank account.

K1NVTEM5

Soon-Osberger - cross

1 Q. Okay. So what I'm hearing, correct me if I'm wrong, the
2 board had its own bank account, but Crystal had signatory
3 authority over that bank account?

4 A. That's right.

5 Q. Okay.

6 A. That's right.

7 Q. And Crystal -- given that it had signatory authority over
8 the bank account, you would agree with me that, as a result,
9 Crystal had the legal capacity to pay bills on behalf of the
10 board?

11 A. They only pay bill on everything we approve, yes.

12 Q. I understand that. But Crystal though had the ability, the
13 authority, to pay bills on behalf of the co-op?

14 A. That's right.

15 Q. On behalf of the board?

16 A. That's right. That's right.

17 Q. And as far as signatory authority goes, no one on the board
18 at the co-op, for example, yourself, had that signatory
19 authority to issue checks?

20 A. No.

21 Q. That's not correct?

22 A. Oh, we don't have -- right, we don't sign checks, no, we
23 don't have authority to sign checks.

24 Q. I just want to make sure there's no confusion.

25 So, for example, you, yourself, you could not write a

K1NVTEM5

Soon-Osberger - cross

1 check on behalf of the co-op board; is that correct?

2 A. That's correct.

3 Q. Now, ma'am, I'm going to switch gears again to the actual
4 device.

5 Now, it's my understanding that the device was in --
6 you know what? Can you just explain -- paint a little picture
7 to the jury as to what the building looks like, like when you
8 enter, where the device was when you first came in?

9 A. It's on the right-hand side. So you come up to the
10 entrance. We have a -- we have our front door, and then we
11 have a panel -- we have a side panel on the right to the left.
12 And so the intercom system is on the right-hand side of the
13 building.

14 Q. Okay. So when an individual walks up, you walk up, and
15 then the device is to the right?

16 A. The device is on the right-hand side, yes.

17 Q. Okay. Now, it's my understanding that your testimony was
18 it was too low and that was a problem? The device was too low?

19 A. That was one of the problem.

20 Q. Okay. Let's talk about that problem.

21 But the reason that the device was too low, at least
22 from your point of view, is that people had to, like, bend down
23 in order to get their face -- a snapshot taken, is that my
24 understanding?

25 THE COURT: She doesn't know what your understanding

K1NVTEM5

Soon-Osberger - cross

1 is.

2 Q. Let me phrase it this way, ma'am: The device is too low,
3 so the complaints were that people had to bend down in order to
4 look at the device?

5 A. The device was positioned where it doesn't capture the
6 person's face. If it's a FaceNet recognition, it's not
7 capturing the person's face, period.

8 Q. I understand. But why wasn't it capturing the face? My
9 understanding -- and correct me if I'm wrong -- that part of
10 the complaint was that the device was too low so that when
11 people walked up to it, it wouldn't capture their face, it
12 would capture their chest or something like that?

13 MR. BHATIA: Objection, your Honor.

14 THE COURT: Sorry. What's the objection?

15 MR. BHATIA: Compound question.

16 THE COURT: Yes. Also cease asking about your
17 understanding. It's complicating the question. Just ask her
18 what the facts are.

19 MR. DiRUZZO: Sure.

20 Q. Ma'am, was the device too low in that it took a picture of
21 someone's chest instead of their face?

22 A. That's my assessment. And I was looking for Ari. Is it
23 because it's low, because my concern was it's not capturing the
24 first person's face. Could it be it's too low. I don't know.
25 That's why I was looking for him to give me an answer.

K1NVTEM5

Soon-Osberger - cross

1 Q. But, ma'am --

2 A. Why isn't it capturing the face of the person?

3 Q. But, ma'am, wasn't the reason that it was positioned where
4 it was was the device had to be Americans with Disability Act
5 compliant?

6 A. That's what Ari is saying.

7 Q. And you would agree with me that the Americans with
8 Disabilities Act, also known as the ADA, that's a federal law?

9 MR. BHATIA: Objection, your Honor.

10 THE COURT: Sustained. There's no evidence that that
11 is, in fact, true. Then this case is not about the Americans
12 with Disabilities Act. Counsel, move on.

13 BY MR. DiRUZZO:

14 Q. Now, ma'am, the device was moved from its initial position
15 to a different position on the building; is that correct?

16 A. I believe that happen in January, maybe it was December or
17 January. Months we were working with Ari on it. And we had to
18 move it because the mailman can't -- it's illegal -- the
19 mailman can't get to the mailbox. And we just could not have
20 that there anymore.

21 And there's a hole, there's a big hole where the old
22 panel was. So the person that we had come and do our lobby,
23 just move it, cover the panel, and so that the mailman can
24 access to the -- to the mailbox. And so if Ari can't explain
25 where its positioning is not capturing the face, and there's a

K1NVTEM5

Soon-Osberger - redirect

1 hole in the panel, we move that onto where the hole is, and so
2 that the mailman can get to that.

3 And then right from the start, Ari knows, he said,
4 When you're -- he said that you can have your contractor move
5 that -- that panel.

6 Q. Just so we're clear, ma'am, it was a contractor that the
7 board hired or Crystal hired to move the device?

8 A. It was a contractor to the corporation, yes.

9 Q. Just for clarity, it wasn't GateGuard and Mr. Teman that
10 moved it, it was the co-op board that moved it?

11 A. Not co-op board, but contractor to the co-op board, yes.
12 But that was January, after months and months of working with
13 Ari.

14 MR. DiRUZZO: The Court's indulgence, your Honor.

15 (Counsel conferred)

16 MR. DiRUZZO: Yield the witness, your Honor.

17 THE COURT: All right. Any redirect?

18 MR. BHATIA: Briefly, your Honor.

19 THE COURT: Go ahead.

20 REDIRECT EXAMINATION

21 BY MR. BHATIA:

22 Q. Ms. Soon-Osberger, you were asked a few questions about
23 what Mr. Teman promised you regarding the device, right? Some
24 of the features of it and how it would -- how it involved
25 facial recognition? Did the device work?

K1NVTEM5

Soon-Osberger - redirect

1 A. There's no such thing as facial recognition in that device.

2 THE COURT: One moment.

3 Counsel, the witness was shaking her head, I think,
4 intending to convey either a no or yes.

5 You need to use words.

6 A. No, it did not have.

7 Q. It did not. What was wrong with it?

8 A. What's that?

9 Q. What was wrong with the device?

10 A. What was wrong?

11 First of all, it was not facial recognition at all.
12 Facial recognition means your face goes into that system and
13 opens the door. That never even existed.

14 Secondly, there's no -- it never did a handshake to
15 our intercom, our network system, to open the door, to dial
16 somebody if somebody's at the door and they press the button to
17 the guest. The delivery person, you give them access to it,
18 they can't access because it isn't opening the door for them.

19 Q. How long did you have the intercom installed in the
20 building?

21 A. We had it August to almost about January 10th.

22 Q. So that's several months?

23 A. Five, six months.

24 Q. How long did it actually work?

25 A. How long did it work? It didn't -- I think it worked like

K1NVTEM5

Soon-Osberger - recross

1 it will -- it will open up one time, and then you do a second
2 time, it doesn't work anymore.

3 Q. Why did you keep -- I'm sorry.

4 A. Sorry. It keep looking for the internet service the second
5 time.

6 Q. Why did you keep it installed so long if it didn't work?

7 A. Because we were trying to work with Ari. He keep giving us
8 reason why it doesn't work. So we tried different things and
9 we tried different things. And we try a different network
10 services. We pay a lot of money to get Spectrum in there to
11 install the network system. We got the Spectrum, we connected
12 it, and it didn't work. Nothing worked.

13 Q. And did he tell you what would happen if you removed the
14 device?

15 A. He was threatening, yeah, that he would charge the \$18,000.

16 Q. Was that part of the reason you kept it so long?

17 A. Yeah, yeah, it's all these threats were -- yeah.

18 MR. BHATIA: No further questions, your Honor.

19 THE COURT: All right.

20 Any recross, Mr. DiRuzzo?

21 MR. DiRUZZO: Quickly, your Honor.

22 THE COURT: Go ahead.

23 RECROSS EXAMINATION

24 BY MR. DiRUZZO:

25 Q. Ma'am, the system worked insofar as, at a minimum, it

K1NVTEM5

Soon-Osberger - recross

1 provided a bunch of data or information when you go onto the
2 site, you could login and view the logs of people coming and
3 going into the building; correct?

4 A. It logged the system trying to come in and go out. It
5 never opened the door for anybody.

6 Q. Okay. But my question was though the system did collect
7 data, and that data was available to the board; correct?

8 A. The foremost reason we bought the system is so that people
9 can access the building, delivery people, guests of the
10 shareholders, anybody that need a virtual key to access or not
11 have to use a key, that was another functionality that we were
12 looking for. It's a functionality of exiting, entering.

13 The data really didn't -- we weren't even have access
14 to it. Management have access. If we needed information, we
15 go to them for it. It's not something that was a priority when
16 we look for the system. It was the entering and exiting
17 capability.

18 Q. Now, ma'am, you testified that Mr. Teman threatened to
19 start litigation against the board; correct?

20 A. Yes.

21 Q. But the board was more than able to start its own
22 litigation to contest the validity of the contract; correct?

23 A. I'm not understanding, that something I didn't --

24 Q. Let me ask it a different way: Mr. Teman threatened to
25 sue; correct?

K1NVTEM5

Soon-Osberger - recross

1 A. Mm-hmm.

2 Q. The board could have sued Mr. Teman and GateGuard, but it
3 chose not to?

4 MR. BHATIA: Objection, your Honor.

5 THE COURT: Sustained. Beyond the scope.

6 MR. DiRUZZO: Nothing further, your Honor.

7 THE COURT: All right.

8 Any re-redirect?

9 MR. BHATIA: No.

10 THE COURT: All right.

11 Ms. Soon-Osberger, you may step down. Your testimony
12 is complete. Thank you.

13 (Witness excused)

14 THE COURT: Government, call your next witness.

15 MR. BHATIA: The government calls Gina Hom.

16 GINA HOM,

17 called as a witness by the Government,

18 having been duly sworn, testified as follows:

19 THE COURT: All right. Good afternoon, Ms. Hom.

20 Welcome to court.

21 I'll ask you kindly to keep your voice up. So lean
22 into the mic and really shout it out so that everyone in this
23 large old courtroom can hear you.

24 THE WITNESS: Okay.

25 THE COURT: All right.

K1NVTEM5

Hom - direct

1 Counsel you, may inquire.

2 DIRECT EXAMINATION

3 BY MR. BHATIA:

4 Q. Ms. Hom, where do you work?

5 A. Crystal Real Estate Management.

6 Q. What's your title there?

7 A. Vice president.

8 Q. What are your day-to-day responsibilities as a vice
9 president?

10 A. I oversee all the finances on all the properties that we
11 manage.

12 Q. And are you familiar with the building at 18 Mercer Street?

13 A. Yes.

14 Q. What's your familiarity with it?

15 A. We used to manage that property about a year ago.

16 Q. At Crystal Real Estate Management, you were the management
17 company for 18 --

18 A. Correct. Correct.

19 Q. And what kind of work did you do on behalf of 18 Mercer
20 Street?

21 A. We oversaw the day-to-day operations.

22 Q. What kind of work did you do with regards to finances?

23 A. We collected the maintenance, we paid vendor bills, we paid
24 the mortgage, we paid utilities, repair bills.

25 Q. You say "we." Who else --

K1NVTEM5

Hom - direct

1 A. Real estate management, I'm sorry.

2 Q. At Crystal Real Estate Management, what kind of work did
3 you do with regard to paying expenses?

4 A. As invoices came in, we would pay the repair bills or any
5 of the maintenance bills, "maintenance" meaning elevator,
6 boiler.

7 Q. At Crystal Real Estate Management, who is authorized to
8 sign for the 18 Mercer account?

9 A. It was myself and my partner, Jackeline Monzon.

10 Q. Okay. Are you familiar with the entity 18 Mercer Equity,
11 Inc.?

12 A. Yes.

13 Q. What is that?

14 A. That is a cooperative that Crystal Real Estate Management
15 was hired to manage.

16 Q. And did you manage the account for -- the bank account for
17 18 Mercer Equity, Inc.?

18 A. Yes, we did.

19 Q. What kind of funds went into that account?

20 A. The funds were any maintenance collected for the property
21 on a monthly basis.

22 Q. So those are the shareholders' monthly maintenance
23 payments?

24 A. Correct.

25 Q. What was the process for approving expenses on the 18

K1NVTEM5

Hom - direct

1 Mercer Equity account?

2 A. Any invoices that comes in for any day-to-day operations of
3 the property, the managing agent, which was my partner,
4 Jackeline Monzon, would review the invoice and approve it.

5 Q. And would you require any other approvals in order to pay
6 out an expense?

7 A. If it was a major repair or expense, then the board would
8 have to approve it as well.

9 Q. Were invoices required to pay expenses?

10 A. I'm sorry?

11 Q. Were invoices required in order to pay expenses?

12 A. Yes, they were.

13 Q. Shifting gears now, are you familiar with the GateGuard
14 intercom?

15 A. Yes, I am.

16 Q. I'm sorry. Go ahead.

17 A. I'm sorry. That was a company that was hired to install
18 new intercom system.

19 Q. And did they install one at 18 Mercer Street?

20 A. To the best of my knowledge, yes.

21 Q. What was the experience of the shareholders of 18 Mercer
22 with the GateGuard intercom?

23 MR. DiRUZZO: Objection. Hearsay.

24 THE COURT: Sustained.

25 Q. Did there come a time when you were approved to pay an

K1NVTEM5

Hom - direct

1 invoice for the 18 Mercer Equity account to GateGuard?

2 A. Yes, I was.

3 Q. I'd like to direct your attention to Government Exhibit 143
4 in evidence. Is this a check that you issued to GateGuard,
5 Inc.?

6 A. Yes, it is.

7 Q. How do you know that?

8 A. Because that is my signature on the bottom.

9 Q. And does this look like the checks you issued on behalf of
10 18 Mercer Equity, Inc.?

11 A. Yes, it is.

12 Q. And this is a check for \$3,947.88. Walk us through the
13 process from getting an invoice to paying out this check.

14 A. Okay. With regard to this particular invoice, it was
15 emailed out by the board saying that this was a deposit needed
16 in order for GateGuard to install the new intercom system.

17 Q. What happens after you get an --

18 A. After I get -- I'm sorry. After I get the invoice, I enter
19 into the system, and then I issue the check. And I do not
20 recall if the check was mailed or if it was picked up.

21 Q. You mentioned two things, you mentioned an invoice and you
22 mentioned an email.

23 A. Correct.

24 Q. Are both of those things required in order to pay that
25 expense or is only one of them required?

K1NVTEM5

Hom - direct

1 A. On this particular case, yes.

2 Q. I'm sorry, are both required?

3 A. The email was sent by the board with their approval to pay
4 this invoice. And attach the email was a copy of an invoice.

5 Q. In order to pay an invoice for a vendor like GateGuard, you
6 would require both an invoice and a board approval?

7 A. Correct.

8 Q. Okay. I'd like to direct your attention to Government
9 Exhibit 143, also in evidence.

10 I'm sorry. I'll direct your attention to Government
11 Exhibit 201 and 202. Let me look at 202 first.

12 Is this a check that you issued from the 18 Mercer
13 Equity account?

14 A. No, it is not.

15 Q. Did you authorize this check?

16 A. No, I did not.

17 Q. And how do you know that?

18 A. Because the font and the whole entire look of the check is
19 not what I'm familiar with. And that is not my signature on
20 the bottom of the check.

21 Q. Did there come a time in March 2019 when you learned about
22 an unauthorized -- when you reported an unauthorized check in
23 the 18 Mercer Equity account?

24 A. Yes.

25 Q. How did you find out about that check?

K1NVTEM5

Hom - direct

1 A. After we -- Crystal Real Estate Management terminated the
2 contract of 18 Mercer, which would have ended March 31st, on or
3 about the 15th of March. I was checking the bank account on a
4 daily basis to make sure that any outstanding checks that we
5 had issued on behalf of 18 Mercer has cleared so I can close
6 the account. At that point I noticed an \$18,000 check from the
7 night before had gone through the bank. And I know I did not
8 issue an \$18,000 check.

9 Q. Is this the check that you saw?

10 A. Yes.

11 Q. What was your reaction to seeing it?

12 A. Shocked. And at that point I called the bank and had them
13 place a stop payment on it.

14 Q. Why were you shocked?

15 A. Because I did not issue a check. And it overdrew my
16 account. I'm sorry, not my account, 18 Mercer's account.

17 Q. It overdrew the account?

18 A. Correct.

19 Q. And when you reported this check as unauthorized -- is that
20 right? You did that?

21 A. Yes, I did. I emailed the bank.

22 Q. Did you ask the board first whether this was authorized?

23 A. No.

24 Q. Why not?

25 A. Because the only people that were authorized to issue any

K1NVTEM5

Hom - cross

1 payments on this would have been myself or Jackeline. And
2 neither one of us had done it.

3 Q. Fair to say that because you didn't authorize the check,
4 you were able to report it as unauthorized?

5 A. Correct.

6 MR. BHATIA: One moment, your Honor.

7 (Counsel conferred)

8 Q. Did you ever see an invoice in connection with this check?

9 A. With this -- the \$18,000 check?

10 Q. Yes.

11 A. No, I did not.

12 Q. Did you ever receive -- did there ever come a time when you
13 received an invoice for \$18,000 from GateGuard, Inc.?

14 A. No, I did not.

15 Q. Did there ever come a time when you had approval from
16 Bonnie to write a check for \$18,000?

17 A. No, I did not.

18 MR. BHATIA: No further questions, your Honor.

19 THE COURT: All right.

20 Cross-examination. Mr. DiRuzzo.

21 CROSS-EXAMINATION

22 BY MR. DiRUZZO:

23 Q. Good afternoon, ma'am.

24 A. Good afternoon.

25 Q. My name is Joseph DiRuzzo. I represent Mr. Teman.

K1NVTEM5

Hom - cross

1 We've never spoken before; correct?

2 A. Correct.

3 Q. And so I'm going to ask you a couple questions. If I speak
4 too fast, don't speak loud enough, just let me know. I'll
5 either repeat or rephrase.

6 A. Okay.

7 Q. Ma'am, I'm going to start off with talking about Crystal's
8 relationship with 18 Mercer. It's my understanding that you,
9 "you" being Crystal, were the management company for 18 Mercer;
10 correct?

11 A. Correct.

12 Q. And you did for Mercer what I assume you do for most co-op
13 or condo buildings, you accept monthly fees and then you pay
14 monthly bills; is that correct?

15 A. Correct.

16 Q. And in doing so, you would issue checks. And I'm going to
17 show you an example of a check. Government Exhibit 143 is
18 already admitted in evidence. And this is the document that
19 you just testified about.

20 Ma'am, this is -- is this your signature, is that my
21 understanding? Did you write this check?

22 THE COURT: Please don't ask about your understanding.
23 She doesn't know it. Just ask whether it's her signature.

24 Q. Is that your signature, ma'am?

25 A. That one, yes.

K1NVTEM5

Hom - cross

1 Q. Now, to be clear, this check off of this bank account, that
2 wasn't Crystal's money, that was Mercer's money; correct?

3 A. That's correct.

4 Q. So it's a Mercer bank account that you manage, run; that
5 fair to say?

6 A. Correct.

7 Q. Now, ma'am, I'm showing you what's been marked as
8 Government Exhibit 202, which is already in evidence.

9 Do you see that in front of yourself, ma'am?

10 A. There's nothing on my screen.

11 Q. Are you able to see that, ma'am?

12 A. Yes.

13 Q. Now, ma'am, on the bottom right-hand side, do you see this
14 language right there, "Draw per contract. No signature
15 required"?

16 A. Yes.

17 Q. Ma'am, you were aware that Mercer had a contract with
18 GateGuard; correct?

19 A. No.

20 Q. You weren't aware of that?

21 A. I was not aware they had a contract. I know that they had
22 an agreement with them.

23 Q. Okay.

24 A. As far as I know.

25 Q. Well, what's your understanding of the agreement that you

K1NVTEM5

Hom - cross

1 believed Mercer had with GateGuard?

2 A. That they hired -- 18 Mercer hired GateGuard to install the
3 new intercom system.

4 Q. Okay. But that was the extent of your understanding of the
5 business relationship between Mercer and GateGuard?

6 A. Correct.

7 Q. I'm showing you a document that's been admitted in
8 evidence, Government Exhibit 431. And bottom of the first page
9 here, can you see that? Are you able to read that, ma'am?
10 Would you like me to blow it up a little bit?

11 A. No, that's okay. I see it.

12 Q. Okay. Ma'am, is that your email address?

13 A. Yes, it is.

14 Q. So you received this email from Ms. Soon-Osberger; correct?

15 A. Yes.

16 Q. And this email had an attachment. Are you able to see that
17 there, ma'am?

18 A. A little blurry, but --

19 THE COURT: Can you zoom it, counsel? Thank you.

20 Q. Is that a little better, ma'am?

21 A. Yes.

22 Q. And you would agree with me that that's -- this is the
23 attachment that came with the email that I just referenced that
24 you received from Ms. Soon-Osberger; correct?

25 A. Yes.

K1NVTEM5

Hom - cross

1 Q. And, ma'am, do you see that right there: Buyer accepts
2 terms and conditions at, then there's a website?

3 A. Yes.

4 Q. Ma'am, you actually saw this document, because you signed
5 the check in the amount of just under \$4,000; correct?

6 A. Correct.

7 Q. And, ma'am, did you bother to take a look at the terms and
8 conditions that were referenced in this invoice?

9 A. No, because it was -- I was instructed by the board to pay
10 on their behalf.

11 Q. So, ma'am, I'm showing you what's been marked and admitted
12 in evidence as Government Exhibit 441.

13 Ma'am, can you see that in front of you?

14 A. Yes.

15 Q. Ma'am, this is a GateGuard terms and conditions. So is it
16 your testimony that you never saw -- or let me say it another
17 way. Is your testimony that you were never provided this
18 document by anyone at the board of 18 Mercer?

19 A. I never saw this, no.

20 Q. I understand.

21 A. I never saw the terms and conditions.

22 Q. But my question was were you ever provided it by anyone at
23 18 Mercer?

24 A. No.

25 Q. And, ma'am, when you communicated with Signature Bank that

K1NVTEM5

Hom - redirect

1 there was no authorization -- well, let me back up a step.

2 Returning your attention to Government Exhibit 202,
3 this portion right here, "Draw per contract," you never went to
4 the board at 18 Mercer to inquire if the board had entered into
5 a contract with GateGuard that would have allowed GateGuard to
6 issue this check?

7 A. No.

8 Q. And I just want to make sure it's clear, because I phrased
9 my question in the negative. So I asked you, you never went
10 to --

11 A. I never went to the board with regard to this check.

12 Q. And because you've never seen the terms and conditions, you
13 were never provided the terms and conditions, you obviously
14 didn't have the opportunity to read the terms and conditions;
15 correct?

16 A. That's correct.

17 MR. BHATIA: Objection.

18 THE COURT: Overruled.

19 MR. DiRUZZO: Yield the witness, your Honor.

20 THE COURT: Any redirect?

21 (Counsel conferred)

22 REDIRECT EXAMINATION

23 BY MR. BHATIA:

24 Q. Ms. Hom, you were one of the authorized signers for the 18
25 Mercer Equity account?

K1NVTEM5

Hom - recross

1 A. I'm sorry?

2 Q. You were one of the authorized signers for the 18 Mercer
3 Equity account?

4 A. Yes.

5 Q. And you paid certain vendors when there's a contract
6 between the board and that vendor, right?

7 A. Correct.

8 Q. In those instances, was there an invoice?

9 A. Yes.

10 Q. Was an invoice required even if there was a contract?

11 A. At all times, yes.

12 Q. Why was an invoice required?

13 A. Because that was proof of what the vendor did. And in this
14 case, the board would have had to approve any installation of
15 any agreement that they made with them.

16 Q. Did you ever pay checks based on a contract alone?

17 A. No.

18 MR. BHATIA: No further questions, your Honor.

19 THE COURT: Any recross?

20 MR. DiRUZZO: Yes, your Honor.

21 RE CROSS EXAMINATION

22 BY MR. DiRUZZO:

23 Q. Ma'am, the vendors of 18 Mercer, they would have been privy
24 to your relationship with Crystal -- let me say this -- phrase
25 it this way: The requirement that you had that you needed an

K1NVTEM5

Hom - recross

1 invoice before you would issue a check on behalf of 18 Mercer,
2 that requirement was between Crystal and 18 Mercer; correct?

3 A. No.

4 Q. Where did that requirement come from?

5 A. We -- Crystal Real Estate Management always has invoices.
6 Any vendors that we pay, any checks that we issue, we always
7 have an invoice.

8 Q. So is that Crystal's rule or is that 18 Mercer's rule?

9 A. Both.

10 Q. So you both have the same rule?

11 A. Yes.

12 Q. But you would agree with me that the vendors of 18 Mercer
13 might not know about that rule; correct?

14 A. They would if they were -- they want a check issued, yes.
15 If they wanted a check issued, we would ask them to submit
16 invoice for payment.

17 Q. Well, ma'am, if someone from the board of 18 Mercer
18 informed an 18 Mercer vendor that an invoice was not needed,
19 you wouldn't have been able to control that, would you?

20 A. We would need receipts of anything that was done.

21 MR. DiRUZZO: No further questions.

22 THE COURT: Any re-redirect?

23 MR. BHATIA: No, your Honor.

24 THE COURT: Ms. Hom, you may step down. Your
25 testimony is complete. Thank you.

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(Witness excused)

THE COURT: Government, call your next witness.

MR. BHATIA: The government calls Joseph Soleimani.

(Continued on next page)

Klndtem6

Soleimani - direct

1 THE COURT: Ladies and gentlemen, if you want to take
2 a moment and stretch your legs, this is a good moment while we
3 wait for the witness.

4 (Pause)

5 JOSEPH SOLEIMANI,

6 called as a witness by the government,
7 having been duly sworn, testified as follows:

8 THE CLERK: Please be seated.

9 State and spell your full name for the record, please.

10 THE WITNESS: Joseph Soleimani, J-o-s-e-p-h
11 S-o-l-e-i-m-a-n-i.

12 THE COURT: All right. Good afternoon, Mr. Soleimani.
13 All right. Welcome to the court.

14 I can already tell that you have a soft voice. That
15 won't work. I need you to really bellow it out. So lean into
16 the mic. Keep your voice up so that everyone here can hear
17 you.

18 Counsel, you may inquire.

19 DIRECT EXAMINATION

20 BY MR. BHATIA:

21 Q. Mr. Soleimani, where do you work?

22 A. ABJ Properties.

23 Q. And what is your title there?

24 A. Vice president.

25 Q. How long have you had the title of vice president?

Klndtem6

Soleimani - direct

1 A. 14 years.

2 Q. What kind of work does ABJ Properties do?

3 A. It is a property management company.

4 Q. And what does it mean to be a property management company?

5 A. We oversee operations of several properties.

6 Q. You may have to speak up just a little bit louder.

7 A. We oversee operations of several properties.

8 Q. Thank you.

9 What types of properties does it manage?

10 A. Multifamily and mixed use.

11 Q. As a general matter, where are those buildings located?

12 A. Northern Manhattan and Bronx.

13 Q. And focusing on you now, as vice president, what are your
14 duties?

15 A. I oversee building managers, the accounting, the legal, and
16 overall day-to-day operations.

17 Q. About how many buildings does ABJ Properties manage?

18 A. 50.

19 Q. And so do you play that role for all of those buildings?

20 A. Yes.

21 Q. In the finances, are you involved in budgeting?

22 A. Yes.

23 Q. Do you have responsibilities over writing checks?

24 A. Yes.

25 Q. And do you have a role in invoicing and paying expenses?

Klndtem6

Soleimani - direct

1 A. Yes.

2 Q. What is your role with regards to negotiating and approving
3 contracts?

4 A. I'm authorized to approve and negotiate those contracts.

5 Q. Are you familiar with a company called ABJ Milano LLC?

6 A. Yes.

7 Q. What is it?

8 A. ABJ Milano LLC is an entity that owned several properties
9 which ABJ Properties managed.

10 Q. Are you familiar with a term -- the name ABJ Lenox LLC?

11 A. Yes.

12 Q. And what is ABJ Lenox?

13 A. ABJ Lenox also owns several properties that were managed by
14 ABJ Properties.

15 Q. OK. And what is the connection between -- I promise you we
16 won't keep using the long names all the time, but ABJ
17 Properties, ABJ Lenox and ABJ Milano, what is the connection
18 between the three of those?

19 A. ABJ Properties managed the properties owned by the other
20 two entities.

21 Q. And who are the owners of ABJ Properties?

22 A. Myself and my brother Benjamin.

23 Q. How do you and your brother divide day-to-day
24 responsibilities at ABJ Properties?

25 A. He handles more of the acquisitions, dispositions. I

Klndtem6

Soleimani - direct

1 handle more of the day-to-day operations.

2 Q. If there was a contract between -- or if there is an
3 agreement between ABJ Properties and a vendor, who would enter
4 into that agreement?

5 A. I would.

6 Q. Changing topics now.

7 How did you first meet Mr. Teman?

8 A. I reached out to him regarding his Sublet Spy software.

9 Q. When did you first meet -- when did you first meet
10 Mr. Teman?

11 A. It was late 2016, around November/December.

12 Q. And is there a person in this courtroom today that you
13 recognize as Mr. Teman?

14 A. Yes.

15 Q. Can you identify him by an article of clothing?

16 A. Sure. He's wearing a silver tie, blue suit.

17 MR. BHATIA: Your Honor, I would like the record --
18 with the Court's permission, I would like the record to reflect
19 that the witness has identified the defendant.

20 MR. GELFAND: No objection.

21 THE COURT: The record so reflects.

22 BY MR. BHATIA:

23 Q. Is that a person you had done business with in the past?

24 A. Yes.

25 Q. When you first met Mr. Teman, was there a product he was

Klndtem6

Soleimani - direct

1 selling?

2 A. Yes.

3 Q. What was that product?

4 A. He was selling the Sublet Spy software.

5 Q. And what did he tell you was Sublet Spy?

6 A. Sublet Spy was software that would catch people who were
7 using their apartment for Airbnb or other short-term sublet
8 services.

9 Q. Did you ultimately subscribe to Sublet Spy?

10 A. Yes.

11 Q. When was that?

12 A. That was soon after I met him.

13 Q. Did there come a time when ABJ Properties purchased another
14 product from Mr. Teman?

15 A. Yes.

16 Q. What was that product?

17 A. That was the GateGuard system.

18 Q. And what did he tell you was GateGuard?

19 A. GateGuard is an intercom and door entry system.

20 Q. What did he tell you were the features of the device?

21 A. People could enter a code or would be able to enter the
22 building using facial recognition. It would also act as an
23 intercom. Someone could ring on the intercom, it would go to
24 your phone, tablet, or your computer.

25 Q. Did there come a time when you agreed to purchase some

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Soleimani - direct

1 intercom devices?

2 A. Yes.

3 Q. In how many properties?

4 A. Seven.

5 Q. If you could take a look at -- and there is a binder to
6 your left -- Government Exhibits 401 through 409. I am just
7 going to ask you if you recognize them.

8 (Pause)

9 A. Yes, I recognize these.

10 Q. How do you recognize them, as a general matter?

11 A. They're either pictures I recognize or emails that I was
12 part of.

13 Q. And are the emails with or to or from a particular person?

14 A. Yes.

15 Q. Who?

16 A. Ari Teman.

17 MR. BHATIA: Your Honor, the government offers
18 Government Exhibits 401 through 409.

19 THE COURT: Any objection?

20 MR. GELFAND: May I have one minute?

21 THE COURT: Of course.

22 (Pause)

23 MR. GELFAND: May I confer with Mr. Bhatia for a
24 moment?

25 THE COURT: Go ahead.

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Soleimani - direct

1 (Pause)

2 MR. GELFAND: Your Honor, can we approach the sidebar
3 for a minute?

4 THE COURT: Sure.

5 (Continued on next page)

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Klndtem6

Soleimani - direct

1 (At the sidebar)

2 MR. GELFAND: Your Honor, there is a rule of
3 completeness issue. I don't want to get into the narrative in
4 front of the jury. One of the emails that the government is
5 seeking to admit is an email from Mr. Teman that basically says
6 GateGuard is closing down.

7 THE COURT: What email is it, what document?

8 MR. BHATIA: 403.

9 THE COURT: All right. This is document 403, and it
10 is an email from Mr. Teman to Mr. Soleimani on March 9, 2018.

11 Go ahead. What is the issue?

12 MR. GELFAND: There is a follow up to that email
13 immediately responding from Ben Soleimani, cc'ing Joseph
14 Soleimani and Mr. Teman, basically saying don't shut it down,
15 and we would move to admit that under the rule of completeness
16 if this is coming in.

17 THE COURT: Is there any objection to that?

18 MR. BHATIA: Yes, your Honor. I don't think the out
19 of court statement of Mr. Soleimani should be able to come in
20 just because this one is. Mr. Ben Soleimani is not likely to
21 be called as a witness.

22 THE COURT: Let me ask you this question. Is that
23 email from Mr. Ben Soleimani to -- it is a reply, so it will be
24 to, among others, this witness, correct?

25 MR. GELFAND: Yes, your Honor.

Klndtem6

Soleimani - direct

1 THE COURT: Why do I need to address it now? Why
2 can't I address it on cross?

3 MR. GELFAND: I can move it in on cross.

4 THE COURT: Hand me a copy, and on cross I will make
5 an independent informed by the direct. I will reserve on that.

6 MR. GELFAND: Thank you.

7 (Continued on next page)

Klndtem6

Soleimani - direct

1 (In open court)

2 THE COURT: I will receive Government Exhibits 401
3 through 409.

4 Counsel, you may inquire.

5 (Government's Exhibits 401 through 409 received in
6 evidence)

7 MR. BHATIA: One moment, your Honor.

8 (Pause)

9 BY MR. BHATIA:

10 Q. Mr. Soleimani, can you also take a look at Government
11 Exhibits 409A through 409B?

12 A. OK.

13 Q. Do you recognize those?

14 A. 409A appears to be invoices I received. 409B I do not
15 recognize.

16 Q. I'm sorry?

17 A. 409B I do not recognize.

18 MR. BHATIA: One moment, your Honor. May I approach
19 the witness?

20 THE COURT: You may.

21 (Pause)

22 Q. All right. Now, you are looking at 409B?

23 A. Yes.

24 Q. Do you recognize 409B?

25 A. Yes.

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Soleimani - direct

1 Q. What are the two of those documents?

2 A. These are invoices for the GateGuard system.

3 Q. Are those invoices that were sent to you?

4 A. Yes.

5 Q. And are they invoices that you paid?

6 A. Yes.

7 MR. BHATIA: Your Honor, the government moves to admit
8 409A and 409B.

9 THE COURT: Any objection?

10 MR. GELFAND: No objection.

11 THE COURT: Those are both received.

12 (Government's Exhibits 409A and 409B received in
13 evidence)

14 BY MR. BHATIA:

15 Q. Getting back to substance, did you end up purchasing any
16 GateGuard devices?

17 A. Yes.

18 Q. And did you convey that to Mr. Teman, that you wanted to
19 buy them?

20 A. Yes.

21 Q. How did you pay for the intercom devices?

22 A. Via check.

23 Q. And did you receive an invoice for those devices?

24 A. Yes.

25 Q. I'd like to display on the screen Government Exhibit

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Soleimani - direct

1 409A -- you can take a look at it -- in evidence.

2 So, 409A, is this document a set of invoices to you?

3 A. Yes.

4 Q. And they are made out to ABJ Properties, right?

5 A. Correct.

6 Q. And your name is Joseph Soleimani below that?

7 A. Yes.

8 Q. And it has your email address as well?

9 A. Correct.

10 Q. So could we look at now the items listed in this invoice.

11 In the first row it says: Quantity one, GateGuard.xyz
12 Panel. There is a unit price of 500, and an amount 500.

13 There is also lines for installation and monthly
14 service.

15 Did you pay this invoice in full?

16 A. Yes.

17 Q. Did you pay all the invoices in Government Exhibits 409A
18 and 409B?

19 A. To my recollection, yes.

20 Q. Did the price that you paid for your GateGuard devices
21 include service?

22 A. Yes.

23 Q. How much service did it include?

24 A. Six months.

25 Q. Did you own the intercoms when you purchased them?

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Soleimani - direct

1 A. As far as I knew, yes.

2 Q. At the time you believed you owned them?

3 A. Yes.

4 Q. And had you had conversations with Mr. Teman about
5 purchasing those devices?

6 A. Yes.

7 Q. You guys had a back and forth?

8 A. Yes.

9 Q. Did you meet in person at any time?

10 A. Yes.

11 Q. What conversations, if any, did you have over the phone?

12 THE COURT: In person, is that your question?

13 MR. BHATIA: I asked him previously about in person.

14 Now I am asking about the phone.

15 THE COURT: Very good.

16 A. I don't recall the details of the phone conversations.

17 Q. Did your conversations include pricing?

18 A. Yes.

19 Q. Did they include what you would pay for the device?

20 A. Yes.

21 Q. During those conversation, what, if anything, did Mr. Teman
22 tell you about whether he would have the authority to draw
23 checks on behalf of ABJ Properties?

24 A. That was never mentioned.

25 Q. What, if anything, did he say during those conversations --

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Soleimani - direct

1 let me be more specific.

2 When you were talking to him about buying these first
3 devices, what, if anything, did Mr. Teman tell you about
4 whether you would be committed to a ten-year contract?

5 A. There was no discussion about any kind of contract.

6 Q. And during these same conversations -- and I am going to
7 make it specific to those conversations -- what, if anything,
8 did he tell you about his authority to write checks on behalf
9 of ABJ Properties?

10 A. He never mentioned anything of that sort.

11 Q. At the time you purchased the intercoms, the ones listed in
12 Government Exhibits 409A and 409B -- let me rephrase that.

13 After you paid the invoices for 409A and 409B, did
14 Mr. Teman tell you that you had not paid in full?

15 A. At some very later point, yeah.

16 Q. But right after you paid it, you didn't hear anything from
17 him about that?

18 A. No.

19 Q. At the time you -- prior to paying for these intercoms, had
20 Mr. Teman ever told you anything about paying a fee if you
21 wanted to stop using the devices?

22 A. No.

23 Q. Did he mention anything to you about a device removal fee?

24 A. No.

25 Q. Could you take another look at 409A?

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Soleimani - direct

1 A. Sure.

2 Q. What is the date on this invoice?

3 A. March 2nd, 2017.

4 Q. OK. I would like to direct your attention to Government
5 Exhibit 401.

6 MR. BHATIA: If we can zoom in on just the top, the
7 subject, the attachment line.

8 Q. Is this an email from Ari Teman to you and your brother,
9 Benjamin?

10 A. Yes.

11 Q. And the date on this email is September 25, 2017?

12 A. Correct.

13 Q. He writes -- the subject line is, "We're live." What does
14 that mean to you?

15 A. That means that the first system was installed.

16 Q. This is September 2017?

17 A. Yes.

18 Q. Let's talk about the intercoms that were installed.

19 How did they perform?

20 A. They did not perform well.

21 Q. What issues did you have with the intercoms?

22 A. The system would very often shut down and have to restart.
23 The facial recognition wouldn't work. The intercom wouldn't
24 work. And that was pretty much the major issues.

25 Q. Did you receive complaints from tenants?

Klndtem6

Soleimani - direct

1 A. Yes.

2 Q. And what was the gist of those -- what was the substance of
3 those complaints?

4 MR. GELFAND: Objection, your Honor.

5 THE COURT: Counsel.

6 MR. BHATIA: Your Honor, I believe they are admissible
7 not for the truth of the matter asserted.

8 THE COURT: For what separate purpose are they
9 admissible?

10 MR. BHATIA: For the intent on the witness here.

11 THE COURT: All right. I will receive the -- ladies
12 and gentlemen, the witness is about to relate conversations he
13 had with tenants about the intercoms. I'm admitting the
14 statements by the tenants to the witness solely to explain the
15 witness' understanding and state of mind and his later
16 behavior, but you shouldn't take as necessarily true or not
17 true what the tenants said. They are not here to testify. So
18 it is, as we say in the law, hearsay. You can consider what
19 the tenants said solely as it further reflects on the witness'
20 understanding and state of mind and his later actions.

21 Go ahead.

22 BY MR. BHATIA:

23 Q. What did the tenants tell you about the GateGuard -- about
24 the issues with the GateGuard device?

25 A. They were saying that they oftentimes were locked out of

Klndtem6

Soleimani - direct

1 the building because they couldn't get in. There was no way to
2 get in without using the system, the GateGuard system.

3 Oftentimes, they couldn't get packages because the intercom
4 wasn't working. These were not doorman buildings, there is no
5 package room, so they had no way to get those packages if the
6 intercom was not working.

7 Q. And did you observe any problems with the intercom
8 yourself?

9 A. Yes.

10 Q. What problems did you observe yourself?

11 A. I observed similar problems.

12 Q. And did there come a time when you relayed those concerns
13 to Mr. Teman?

14 A. Yes.

15 Q. What did he say?

16 A. Oftentimes he would blame it on either the Internet not
17 working, the power not strong enough, or simply me or the
18 tenants did not know how to use it.

19 Q. When you received complaints from tenants, is that a
20 problem for you as somebody who manages those buildings?

21 A. Yes.

22 Q. Can it result in regulatory issues?

23 A. Yes.

24 Q. And have you dealt with problems in the past -- have you
25 sort of had to deal with tenant issues in the past?

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Soleimani - direct

1 A. Yes.

2 Q. In 2018, did the housing court find in one case that your
3 company had misled a tenant about whether he could renew his
4 lease?

5 A. Yes.

6 Q. And did you misrepresent anything to the tenant or was it
7 others in your company?

8 A. It was others.

9 Q. And did you and ABJ resolve that matter?

10 A. Yes.

11 Q. And did that have anything to do with GateGuard or
12 Mr. Teman?

13 A. No.

14 Q. OK. But regarding GateGuard, you did receive complaints
15 from tenants?

16 A. Yes.

17 Q. And you relayed those to Mr. Teman?

18 A. Yes.

19 Q. Did there come a time when Mr. Teman told you that he was
20 shutting down GateGuard?

21 A. Yes.

22 Q. Did he tell you that in text messages?

23 A. He said it several times I believe by email and text
24 message.

25 Q. He said it more than once?

Klndtem6

Soleimani - direct

1 A. Yes.

2 MR. BHATIA: Mr. Magliocco, could you please publish
3 for the witness Government Exhibit 403.

4 Q. Mr. Soleimani, you may want to follow along on the screen
5 so that we can all be sure that we are looking at the same
6 thing. If you are having trouble seeing it, though, you can
7 look at the binder.

8 At the top of this email, it shows that it is -- if
9 you can zoom in a little bit on just the header -- it shows
10 that it's an email from Mr. Teman to you and your brother,
11 right?

12 A. Yes.

13 Q. And it is dated March 2018?

14 A. Yes.

15 Q. Was Mr. Teman telling you that he was shutting down his
16 system?

17 A. Yes.

18 Q. And why was that significant to you as somebody who had his
19 devices installed in your buildings?

20 A. Because it would mean that the tenants would be locked out
21 permanently until the system is changed.

22 Q. Did you -- what did you tell Mr. Teman when he said he was
23 shutting down GateGuard?

24 A. I tried to convince him not to shut down.

25 Q. Did you try to reassure him?

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Soleimani - direct

1 A. I guess you could say that.

2 Q. At that point, how would you describe your relationship
3 with Mr. Teman?

4 A. It was OK. There were a lot of issues that we were still
5 dealing with on the system, but we were trying to maintain that
6 relationship.

7 Q. Would you describe it as otherwise friendly?

8 A. Yes.

9 Q. Did you or your brother make comments to Mr. Teman to ask
10 him to keep the GateGuard devices in place?

11 A. Yes.

12 Q. What effect would it have on a building if GateGuard shut
13 down unexpectedly?

14 A. We would be getting a lot of complaints. We would be
15 issued housing violations, possible fines.

16 Q. Did there come a time when GateGuard was installed in your
17 buildings when you saw something called the Terms & Conditions
18 on a website?

19 A. No.

20 Q. Did there come a time when through a WhatsApp message
21 Mr. Teman directed you to the terms Web page?

22 A. Yes.

23 Q. Could you take a look at Government Exhibit 409C. I'm
24 going to ask you if you recognize it.

25 (Pause)

Klndtem6

Soleimani - direct

1 A. I don't have a 409C.

2 Q. Mr. Magliocco will bring one up for you.

3 THE COURT: Sorry. Is 409C in evidence?

4 MR. BHATIA: It is not in evidence, your Honor.

5 THE COURT: Let's get it up. Thank you.

6 (Pause)

7 Q. Do you recognize this?

8 A. Yes.

9 Q. As a general matter, what is this document?

10 A. This is a WhatsApp chat between me and Ari Teman.

11 MR. BHATIA: Your Honor, the government offers
12 Government Exhibit 409C.

13 THE COURT: Any objection?

14 MR. GELFAND: No, your Honor.

15 THE COURT: It is received.

16 (Government's Exhibit 409C received in evidence)

17 MR. BHATIA: You can pull this up on the screen.

18 BY MR. BHATIA:

19 Q. I'm going to direct your attention to the line starting --
20 the third line from the top, it says: "Joe S. This is
21 happening way too often."

22 Mr. Teman said, "It's restarting."

23 And you responded, "That's not good enough for me. I
24 can't have tenants/visitors waiting for the system to restart.
25 it either works or it doesn't."

Klndtem6

Soleimani - direct

1 What were you relaying to Mr. Teman here?

2 A. That we were getting complaints still that the system was
3 not functioning properly and we needed it to work 24/7, not
4 only part of the time.

5 Q. OK. Further down on this page, at 9:45:20, Mr. Teman says:
6 "The actual terms our clients are responsible to have CAT5 at
7 the door. We did it for you but it's not the terms."

8 Then you respond: "Send me the terms I signed for. I
9 will review it."

10 Two rows down, Mr. Teman sends you a URL.

11 Why did you say, "Send me the terms I signed for, I
12 will review it"?

13 A. Because I knew I never signed any kind of terms.

14 Q. You have not had any agreement with Mr. Teman other than to
15 buy the devices and for him to install them?

16 A. Correct.

17 Q. And did you go to the URL shown here on this page?

18 A. At a later point.

19 Q. So looking down on the screen for a moment, further in this
20 chat, you say, "I don't see a signature there."

21 And then you list some things that you had agreed to.

22 You say, "I also agreed to a May 1st guarantee. I
23 also agreed to tablets. Should we keep going?"

24 What were you relaying to Mr. Teman here?

25 A. Originally the intercom was supposed to be installed by

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Soleimani - direct

1 May 1st, and I paid for tablets to put in individual apartments
2 in full, which I believe is around \$8,000, which never arrived.

3 Q. At this point, had you agreed to any terms and conditions
4 with Mr. Teman?

5 A. No.

6 Q. So you talked a little bit earlier about your problems with
7 the GateGuard device. Did there ever come a time when you
8 started looking for other alternatives?

9 A. Yes.

10 Q. What did you do?

11 A. Sorry?

12 Q. What did you do to look for other alternatives to
13 GateGuard?

14 A. I looked into other systems.

15 Q. And did there come a time when you installed one of those
16 alternatives in your building?

17 A. Yes.

18 Q. What happened?

19 A. We installed a device in a different building, where my
20 office was located, so that we could test it out ourself on a
21 daily basis and make sure we didn't have similar problems
22 should we choose to replace these systems.

23 Q. Did there come a time when Mr. Teman learned about the
24 device you had installed that was not a GateGuard intercom?

25 A. Yes.

Klndtem6

Soleimani - direct

1 Q. How did he react?

2 A. He was not happy about it.

3 Q. What, if anything, did he say to you?

4 A. I believe I received some threats to remove the system. He
5 sent someone to take a picture of it. And he told us we had to
6 take it off.

7 MR. BHATIA: I would like to publish for the witness
8 Government Exhibit 404. We can zoom in on the text part of
9 this document.

10 I will give the jury just a moment to read it.

11 (Pause)

12 Q. The first line of this document is: "Because you're a
13 dishonest snake, a fraud, and a thief, all communication will
14 be in writing."

15 What was Mr. Teman referring to? Why was Mr. --

16 MR. GELFAND: Objection.

17 THE COURT: Sustained.

18 Q. Did something happen prior to this email that could have
19 prompted Mr. Teman to write this to you?

20 THE COURT: Did something happen prior to this email
21 is the question?

22 Q. Did something happen prior to this email?

23 A. Yes.

24 Q. What happened?

25 A. I installed a different device in a different building.

Klndtem6

Soleimani - direct

1 Q. Was there any contract that limited your ability to install
2 a different device in one of your buildings?

3 A. No.

4 Q. In your conversations with Mr. Teman around this time, did
5 he say anything about why he thought you should not have
6 installed that device?

7 A. Not that I recall.

8 Q. Did he say anything about an agreement that you had with
9 him to not install devices?

10 MR. GELFAND: Your Honor, I object to this line of
11 questioning as leading.

12 THE COURT: Sustained.

13 BY MR. BHATIA:

14 Q. Did there come a time when Mr. Teman said that you owed him
15 money?

16 A. Yes.

17 MR. BHATIA: Your Honor, I would like to publish for
18 the witness Government Exhibit 405.

19 THE COURT: You may.

20 MR. BHATIA: And I'll direct your attention to an
21 email, the email at the bottom of the first page.

22 THE COURT: You will need to blow this up. It is
23 tiny.

24 MR. BHATIA: The middle and bottom, I should say.

25 (Pause)

Klndtem6

Soleimani - direct

1 Q. There is a lot of text here so I will direct your attention
2 to a part of it.

3 At the end of the first paragraph, Mr. Teman says to
4 you: "The amount we sent to collections last week is 268,116,"
5 and then he lists an amount per device.

6 Had you agreed to pay that amount to Mr. Teman?

7 A. No.

8 Q. In fact, how much had you agreed to pay Mr. Teman per
9 device?

10 A. \$1,743.

11 Q. And that was the amount reflected on those invoices we
12 looked at earlier?

13 A. Yes.

14 Q. Had you ever agreed to pay Mr. Teman more than the value of
15 those invoices?

16 A. No.

17 Q. The second-to-last line of this email is: "Now, decide if
18 you want to fight me or pay" me -- excuse me.

19 "Now, decide if you want to fight me or pay, but if
20 you fight, you will pay more." how did you interpret that?

21 A. I interpreted that as he was going to sue us.

22 Q. Is that something that he had said on more than one
23 occasion or just once?

24 A. Yes, he said that multiple times.

25 Q. Did he say that to you in text messages or emails, or how

Klndtem6

Soleimani - direct

1 did he say it?

2 A. I believe both.

3 Q. I would like to direct your attention now to the email at
4 the top of this page.

5 This is your response to him. And the first sentence
6 is: "can you please send me the invoices which you are
7 claiming we owe you?"

8 THE COURT: Can you just blow up the text a little
9 more for the benefit of our jury?

10 (Pause)

11 You can do the entire first email. Even as blown up,
12 it starts so small that it is hard for them to read on those
13 monitors. Thank you.

14 (Pause)

15 MR. BHATIA: I will read again the first -- now I will
16 read the second sentence, too.

17 "Can you please send me the invoices which you are
18 claiming we owe you? Not sure why we owe you money but I'm
19 glad to look into it."

20 Q. Why were you asking Mr. Teman to send you invoices?

21 A. I wanted to see what he was claiming.

22 Q. Did you know why he was asking you to pay more than
23 \$200,000?

24 A. No, I have no idea.

25 Q. Had you ever agreed to pay him that amount of money?

Klndtem6

Soleimani - direct

1 A. No.

2 Q. I would like to direct your attention to Government Exhibit
3 406, and there is an email on the top of the first page.

4 At the very top of this email, we can keep this part
5 blown up, but it is from Ari Teman to Eric Schutzer, Ben
6 Soleimani, and it looks like Joe, Joe Soleimani's email.

7 Now, in the text of this email, the first line is
8 Mr. Teman saying: "Let's get the liens on ABJ buildings by
9 Wednesday."

10 How did you interpret that?

11 A. I interpreted that as he was going to put liens on several
12 properties.

13 Q. Several of your properties?

14 A. Yes.

15 Q. He mentioned in this second line, "They've now stolen from
16 Sublet Spy over \$12,000."

17 Did he tell you anything more about that?

18 A. Not that I recall.

19 Q. Had you ever agreed to pay Sublet Spy \$12,000?

20 A. Yes.

21 Q. Further down this page, he says, "Let's go ahead with the
22 District Attorney's Office on Monday regarding the criminal
23 fraud charges. Their fraud is now nearing half a million
24 dollars."

25 As far as you know, did he ever report you to the

Klndtem6

Soleimani - direct

1 District Attorney's Office?

2 A. Not that I know of.

3 Q. Did you receive other messages that you would -- in which
4 Mr. Teman threatened you with legal action?

5 A. Yes.

6 Q. What was the substance of those communications?

7 A. There were liens he was going to file. He was going to
8 report --

9 MR. GELFAND: Your Honor, I would object to just the
10 general narrative of the substance of a bunch of ambiguous
11 communications. If he wants to ask about specific
12 communications, that's fine.

13 THE COURT: Overruled.

14 You may answer.

15 A. He said he was going to report us to the Mayor's Office,
16 report us to the Attorney General's Office. I believe those
17 were the extent.

18 Q. He mentioned -- did he mention putting liens on any
19 buildings?

20 A. Yes.

21 MR. GELFAND: Objection. Asked and answered, your
22 Honor.

23 THE COURT: Overruled.

24 Q. And did he in fact put liens on any of your buildings?

25 A. Yes.

Klndtem6

Soleimani - direct

1 Q. Which ones?

2 A. 342, 346 Lenox Avenue, and 100 West 138th Street.

3 Q. And what happened with those liens, as far as you know?

4 A. As far as I know, they're no longer in existence.

5 THE COURT: Speak louder, please.

6 A. They are no longer in existence as far as I know.

7 Q. I know you are not a lawyer, but can you tell us anything
8 more about those?

9 A. Yes. From what I understand --

10 MR. GELFAND: Objection, your Honor.

11 THE COURT: Sustained. He is in the process of
12 reporting hearsay.

13 Next question.

14 BY MR. BHATIA:

15 Q. This message is from August 2018. Can you describe your
16 relationship with Mr. Teman in the second half of 2018?

17 A. It was not good at that point.

18 Q. Can you elaborate?

19 A. Yeah. We removed all the systems. We replaced them with
20 another system, a competitor. And our relationship was
21 completely sour.

22 Q. Were you communicating regularly with him?

23 A. No.

24 THE COURT: Mr. Bhatia, is this a good stopping point?
25 I am looking for a good one to break for the day.

Klndtem6

1 MR. BHATIA: It is.

2 THE COURT: All right. Ladies and gentlemen, it is a
3 few minutes before 5. We've made a lot of progress today, and
4 I think it is a good time for a break. So I'm going to wish
5 you well and wish you a very good, safe trip home and a good
6 evening tonight.

7 The same schedule for tomorrow. We'll have breakfast
8 for you at 8:45. I'll need you in your seats and ready in
9 there so I can bring you out at 9:30 so we can get going
10 tomorrow. The attorneys tell me we are making good time, and
11 that should be apparent to all. They are working very hard.

12 I wish you a good evening. I'll see you tomorrow.

13 THE CLERK: All rise.

14 (Continued on next page)

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Klndtem6

(Jury not present)

THE COURT: Mr. Smallman, would you close the door.

All right. The witness may step down and step out. I have a few questions for counsel outside the witness' presence.

Witness, you should stick around so that counsel can tell you where to be, including tomorrow morning.

(Witness not present)

THE COURT: All right. Counsel, just -- we obviously made a lot of progress today, although we didn't quite carry through on the promise to, or the hope of finishing today. Without holding you to it -- I know this is an important witness -- approximately how much longer is there in the direct?

MR. BHATIA: I would say around 20 to 30 minutes.

THE COURT: Very good. How many other government witnesses at this point do you anticipate?

MR. BHATIA: At this point I think there might only be one more witness after this.

THE COURT: Is that Ms. Monzon?

MR. BHATIA: No. That is John Motto from Signature Bank.

THE COURT: Ah, OK. All right. No other --

MR. BHATIA: Obviously, we have to go back and think about it, but I think there should be one or two witnesses.

THE COURT: Again, barring an unexpected development

Klndtem6

1 and even budgeting a fair amount of time for cross of this
2 witness and the next witness, there is every likelihood that
3 the government will rest before the middle of the day tomorrow?

4 MR. BHATIA: That is I think a fair expectation.

5 THE COURT: If not conservative?

6 MR. BHATIA: Obviously, we will go back and sort of
7 think about it --

8 THE COURT: Right. I'm not telling you what to do or
9 not do. I am just trying to get a sense of where we stand.

10 May I ask you, on Exhibit 406 there is a redaction, or
11 an apparent redaction after the word "Joe."

12 MR. BHATIA: We redacted his email address at an
13 earlier stage of this proceeding, and I think we gave the
14 government stamp for that exhibit. We can --

15 THE COURT: I ask only because it is attention
16 getting. The natural question that arose for me is whether
17 there is an expletive or something like that there. But given
18 that everyone else's email address is all over the documents,
19 it seemed that's not clear what the point of that is.

20 Be that as it may, you may want to unredact it and
21 receive it in unredacted form, or at least elicit what is
22 underneath it, just because it creates a natural question.
23 Nothing else has been redacted, as I understand it, in the
24 entire case.

25 MR. BHATIA: You are right, your Honor. When we leave

Klndtem6

1 the court, we will --

2 THE COURT: You will have leave to do that, OK.

3 All right. Defense, anything to -- government,
4 anything to raise before we adjourn?

5 Do you have anything to raise with me before we
6 adjourn?

7 MR. BHATIA: We do, your Honor. One thing -- we would
8 like -- since we might be resting tomorrow morning, we would
9 like to ask for the defense's witnesses or at least the ones
10 they expect to call tomorrow.

11 THE COURT: Well, the defense of course has no
12 obligation to call witness -- you may be seated -- but defense
13 counsel, the point is well taken. In the event that the
14 government rests tomorrow, as seems likely, if this follows a
15 form in many criminal cases, there will be a brief motion from
16 the defense and whatever limited adjournment is needed for me
17 to hear that. Following that, assuming the motion is not
18 granted or granted in full, we would move on to the defense
19 case.

20 I think it's fair, without asking you to commit what
21 you presently anticipate, understanding that you have a range
22 of motion here and you are not bound by what you say.

23 MR. GELFAND: We anticipate, as we've told government
24 counsel, calling Ariel Reinitz as a witness. We have a handful
25 of other witnesses under subpoena that depending on the

Klndtem6

1 testimony that we hear between now and the rest of the case
2 will determine whether we call them. Those witnesses would be
3 two-minute witnesses.

4 THE COURT: They are all, I take it, in New York?

5 MR. GELFAND: Yes, your Honor.

6 THE COURT: All right. Have you alerted the
7 government to who they are?

8 MR. GELFAND: There is an NYPD detective whose name is
9 escaping me. I assume we could issue a subpoena to him and to
10 Detective Alessandrino. The only reason we would call him is
11 if Mr. Soleimani denies making a statement to him, as reflected
12 in the police report.

13 THE COURT: What is the statement?

14 MR. GELFAND: He claimed that \$180,000 was
15 unauthorized in terms of the checks at issue.

16 THE COURT: How many checks, defense counsel, were in
17 fact drawn on the Soleimani or the ABJ, if that is the right
18 way to put it, accounts that are at issue in March and April of
19 2019?

20 MR. GELFAND: JPMorganChase credited their account
21 \$196,000.

22 THE COURT: And so you are concerned that the witness
23 will not acknowledge making a statement to law enforcement that
24 180,000 was unauthorized?

25 MR. GELFAND: Yes, your Honor. To be clear, I am not

Klndtem6

1 saying that -- I have no idea -- in the event that he flat out
2 denies making that statement to the law enforcement officer --

3 THE COURT: Right.

4 MR. GELFAND: -- I think we would be entitled to call
5 the law enforcement officer.

6 THE COURT: Not expressing skepticism, just confusion
7 as to what the purpose is. In other words, I'm assuming that
8 the witness, consistent with what I have been able to divine so
9 far from his examination, will dispute that he ever authorized
10 any of the 2019 checks that were drawn on ABJ. You are telling
11 me those add up to about 190. The witness apparently told law
12 enforcement that the 180 is unauthorized.

13 Is your point that he is implicitly acknowledging the
14 \$10,000 is authorized? I am trying to understand what the
15 purpose is of that. It sounds like he is making, in effect, a
16 statement that is consistent with his testimony here, to wit, I
17 didn't authorize that.

18 MR. GELFAND: Your Honor, I think that is a jury
19 question, yes, your Honor, but it is inconsistent with what the
20 government is alleging is unauthorized.

21 THE COURT: Because the witness is underballing it by
22 \$10,000 and therefore is tacitly admitting that at least 10,000
23 of the 190 or so was authorized; is that the purpose?

24 MR. GELFAND: Yes, your Honor. I'm not exactly clear
25 on the math, but I could represent that there is a disparity in

Klndtem6

1 the math.

2 THE COURT: But that is the point. The relevance lies
3 in the delta between the total of the checks and the witness'
4 statement.

5 MR. GELFAND: Yes, your Honor.

6 THE COURT: We'll take that up as it comes.

7 What about Alessandrino, where does he fit in?

8 MR. GELFAND: Well, the government represented to us,
9 unless that's changed, that they intended to call Detective
10 Alessandrino.

11 THE COURT: So far that is not in the tentative order.
12 Maybe it will happen. But I thought you were reserving the
13 right to call him, and I am trying to understand what that is
14 for. Maybe not. I thought you were saying he was a defense
15 witness.

16 MR. GELFAND: It would be a different statement.
17 Detective Alessandrino also interviewed Mr. Soleimani.
18 Mr. Soleimani made statements to Detective Alessandrino. In
19 particular, Mr. Soleimani represented that his company ended
20 all business with Mr. Teman in October of 2017, and said that
21 no checks were authorized after October of 2017.

22 THE COURT: All right. Look, I'm not going to rule
23 about a hypothetical. It should go without saying that to the
24 extent that a line of inquiry like this might be authorized,
25 you would need to squarely confront the witness with the

Klndtem6

1 contrary proposition and we'll see where we go. I will leave
2 it at that. OK.

3 But, in other words, we're looking at Reinitz for sure
4 and then a possibility of one or two law enforcement witnesses,
5 putting aside the possibility of Mr. Teman's testimony?

6 MR. GELFAND: Yes, based on where we presently stand.

7 THE COURT: OK. I ask only that you keep government
8 counsel apprised of your intentions, without locking you in.
9 And the only reason is that otherwise we have at least some
10 possibility of, you know, a lapse of time enabling counsel to
11 prepare. Much as you had quite substantial notice of who
12 they're calling, I want to make sure that, you know, the
13 truth-seeking process is respected and there is at least some
14 degree of notice here.

15 MR. GELFAND: Yes. The one thing I should say is
16 that -- I apologize, I had assumed, albeit I guess incorrectly,
17 that because Detective Morales is an NYPD colleague of
18 Detective Alessandrino, that our subpoena to Detective Morales
19 was known to the government. Apparently it wasn't.

20 THE COURT: So it is a large organization. I don't
21 know why --

22 MR. GELFAND: I appreciate that, but certainly that
23 would be the limited scope of his testimony. So there is no,
24 you know --

25 THE COURT: All right. They are now on notice.

Klndtem6

1 OK. Be sure that you have the searching conversation
2 you need to with your client about it being his right, as
3 opposed to counsel's, whether or not to testify. In the event
4 that Mr. Teman doesn't testify, chooses not to, I will need to
5 allocute him outside the presence of the jury to confirm that
6 he understands that that is his right and that he has made a
7 thoughtful decision about that. Obviously, he may choose the
8 opposite course and testify, but I want to make sure that there
9 is no doubt that Mr. Teman understands that that in our system
10 is his call.

11 MR. GELFAND: Absolutely. We certainly explained that
12 to Mr. Teman. We will continue to have that discussion.

13 THE COURT: All right. So just playing out the
14 schedule for tomorrow, we're going to get almost certainly to
15 the defense case. It is unclear whether we will get through
16 the defense case. Without holding you to it, assuming that
17 Mr. Reinitz testifies, purely ballparking in terms of
18 approximate length, what length witness would you envision him
19 to be on direct?

20 MR. GELFAND: I think the direct examination would be
21 somewhere in the vicinity of an hour.

22 THE COURT: OK. That's about what I would have
23 expected. That is helpful to know and that is useful, I'm
24 sure, for the government in its preparations. So I guess the
25 open question then is how far we could possibly get if we

Klndtem6

1 possibly end the defense case tomorrow. And I assume the
2 question on all your minds is would we go any farther than
3 that. And I think the government will obviously have an
4 opportunity to have a rebuttal case, so you ought to be
5 prepared for that, if that's the direction things are going and
6 I don't know what you have been thinking about. But if the
7 question is is there any scenario in which we would get to jury
8 arguments, it is unimaginable that we would. And I certainly
9 want you to feel comfortable knowing that we are not going to
10 do that.

11 We obviously need to have a charge conference in
12 between. My staff and I will be taking a look at the charge
13 overnight. And my best guess is that it is more likely we
14 would do that on -- assuming the defense case was to end and
15 there was to be no rebuttal case, or a short one, either way,
16 that would wrap up on Friday. More likely than not, we would
17 do that early on Monday morning, but it's not out of the
18 question we'll do it tomorrow. We'll see. My best guess is I
19 want to take some time.

20 Given how fast we are moving, I think it is all the
21 more important that I get the government's advice of counsel
22 instruction and that I get your -- defense, you have given me
23 your unanimity instruction. I assume that is unchanged.
24 Government, I need some language from you. I assume that is a
25 sentence or two, but I need to make sure we get that. But I

Klndtem6

1 really would like a proposed, ideally jointly, verdict form,
2 but now that we're into the third customer narrative, it's
3 clear to me that each customer narrative is its own story and
4 they don't necessarily travel up or down together. In any
5 event, I think there is likely value -- although I will be glad
6 to hear from you at the time of the charge conference -- there
7 is likely value in a verdict form that reinforces the unanimity
8 instruction by asking for customer-specific findings. I am
9 keeping an open mind, but at a minimum, on the assumption that
10 I went that route, I will want your guidance to me as to what a
11 verdict form would look like.

12 MR. BHATIA: Your Honor.

13 THE COURT: Yes.

14 MR. BHATIA: On this topic, Mr. Imperatore and I have
15 conferred within our office with people who have handled this,
16 including Mr. Blais, who was here earlier. It is our sense
17 that a unanimity instruction may not be required. On the bank
18 fraud counts, the victim here is Bank of America, and as a
19 result we don't think that there needs to be a special --
20 either a unanimity instruction --

21 THE COURT: You are telling me that if the jurors do
22 not agree unanimously on any single check, the defendant can be
23 convicted?

24 MR. BHATIA: I think they have to believe that the
25 victim here, Bank of America, was defrauded, but I'm not sure

Klndtem6

1 they have to agree on a single check as the subject.

2 THE COURT: Why don't you get me a legal memo on that
3 overnight, because it would surprise me if that were the case.
4 And it would seem to me to be inviting an appellate issue, if
5 the case comes out the way you want, to not have some form of
6 unanimity instruction here. It's hard for me to imagine a
7 scenario here in which within each customer relationship the
8 jury splits the baby as to particular checks. It is likely
9 that each set of customer checks travels up or down together.

10 I'm not sure what the value is here, though, of an
11 instruction that would permit the jury hypothetically to
12 convict if, you know, four of them believe that JPMorgan was --
13 or that Bank of America, rather, was defrauded with respect to
14 ABJ and four believe that they were defrauded with respect to
15 Gabay and four believe they were defrauded with respect to
16 Soon-Osberger.

17 Maybe you are technically right. I am skeptical of
18 that. I'm not sure that the government really has any interest
19 other than some arid academic technical one in pursuing that
20 argument. I can't imagine why you wouldn't want an instruction
21 that requires them to convict to -- at least be unanimous on at
22 least a check or a customer relationship. We'll see. But I
23 would be very surprised if you put it that way to your
24 department chiefs if anybody thinks that is a rational way to
25 go.

Klndtem6

1 MR. BHATIA: We will of course confer with them. We
2 will do that more. We did. And I just didn't want the Court
3 to be surprised. We will put in a letter, but we understand.

4 THE COURT: I'm urging that a degree of common sense
5 break out here. I don't know why -- it's hard for me to
6 imagine that a unanimity instruction, at least at the level at
7 which I am envisioning it, doesn't at least guard against some
8 degree of legal risk, and I can't imagine what the practical
9 harm would be under the fact patten here. It is just hard for
10 me to see why you would sail into that where you would at that
11 point have to be arguing harmless error. I don't understand
12 that.

13 MR. BHATIA: Understood.

14 THE COURT: And the defense has been, you know,
15 rightly -- I mean, has been early in identifying to you a
16 unanimity instruction that is wise here.

17 All right. I will see you all at 9 o'clock tomorrow.
18 Thank you.

19 MR. BHATIA: Your Honor, there is one more thing.

20 We had requested Rule 26.2 materials on several
21 occasions. The defense has identified a few 26.2 materials
22 they have produced. We just want to get --

23 THE COURT: What do you mean by "26.2 materials"?

24 MR. BHATIA: That is written statements of the
25 witnesses that they intend to call.

Klndtem6

1 THE COURT: Jencks Act?

2 MR. BHATIA: Yes.

3 THE COURT: Reverse Jencks. Right.

4 Defense, when are you going to produce that?

5 MR. GELFAND: We have produced it. With respect to
6 the two NYPD detectives, that's government discovery.

7 THE COURT: Right. But with respect to Reinitz --

8 MR. GELFAND: With respect to Mr. Reinitz, we have
9 produced early letters. We have also given the Court a copy of
10 it.

11 THE COURT: But is that a comprehensive production of
12 your 3500 material as exists as of now?

13 MR. GELFAND: Yes, your Honor.

14 Just for the record, we produced recordings that
15 Mr. Reinitz had with Bank of America which would fall within
16 that reverse Jencks.

17 THE COURT: Do you have -- look, I mean, to the extent
18 counsel took notes of witness interviews, as the government
19 took notes of its witness interviews, have those all been
20 produced as to Reinitz?

21 MR. GELFAND: Our own notes have been not. I will go
22 back and check to see --

23 THE COURT: Have been produced or have not been
24 produced?

25 MR. GELFAND: Have not been produced, your Honor.

Klndtem6

1 THE COURT: Do they exist?

2 MR. GELFAND: I don't know. I have to go back and
3 check.

4 THE COURT: Sorry. Counsel, you are an officer of the
5 court. Have you interviewed Reinitz?

6 MR. GELFAND: Your Honor, we have interviewed Reinitz.

7 THE COURT: Did you take notes?

8 MR. GELFAND: I'm sure we took notes, your Honor.

9 THE COURT: I'm sure you did. Then the answer is
10 you've got --

11 MR. GELFAND: I'm not saying I'm not identifying off
12 the top of my head right now specific -- it is not that we are
13 holding back.

14 THE COURT: I understand that. But if you took notes
15 that qualify as 3500 material when interviewing Reinitz, much
16 as the government took notes that qualify as 3500 material when
17 interviewing Gabay, refers Jencks applies. And so, you know,
18 be prepared to produce it. And if you hold it back, you know,
19 the last minute, there may be a need for some delay to enable
20 the government to absorb it.

21 MR. GELFAND: Yes, your Honor.

22 THE COURT: It is disquieting in particular because of
23 the background here, where, you know, there was no reference in
24 otherwise comprehensive instructions to an advice of counsel
25 instruction. I continue to regard that as a -- you called it

Klndtem6

1 an academic decision, I call it gamesmanship. To be sure, the
2 government should have spotted this one, too, but in the end it
3 was on you to include that if you thought it was a possible
4 here. And I am not going to be happy to find that the reverse
5 Jencks is untimely produced or late produced, more to the
6 point, requiring an adjournment and, you know, so that the
7 government can absorb it.

8 MR. GELFAND: Your Honor, what I can represent is that
9 in assembling the information that we provided regarding Mr.
10 Reinitz to the government, we veered on the side of including
11 things that do not fall within the category of, quote-unquote,
12 privileged communications but would fall into the category of
13 reverse Jencks for that purpose.

14 THE COURT: Very good. We have a privilege waiver as
15 it relates to Reinitz. So this is a Jencks issue at this
16 point, right? In other words, if you interviewed Reinitz, just
17 like the government interviewed Gabay, 3500 material applies
18 symmetrically, right, the obligation?

19 MR. GELFAND: Yes, your Honor, I understand. What we
20 need to do, and will do, your Honor, and will do immediately is
21 go back -- it would be the category of our notes.

22 THE COURT: Just as you've gotten notes from
23 Mr. Bhatia of his notes or perhaps the prior A.U.S.A. I'm
24 sure -- I mean, I've read the 3500 binder. You've got those
25 from the prior A.U.S.A. They have been painstaking in getting,

Klndtem6

1 marking the 3500 material. The legal obligation is reciprocal
2 upon a government demand, which Mr. Bhatia represents has been
3 made and upon your forming the intention to call the witness.

4 MR. GELFAND: Yes. I just want to be clear with the
5 Court that we've been very inclusive for that reason.

6 THE COURT: So far.

7 MR. GELFAND: Yes.

8 THE COURT: But probably the thing that they may care
9 about most is actually counsel's notes of the witness, which is
10 almost always the 3500 material that the defense most eagerly
11 awaits from the government as to its witnesses. I'm just
12 saying I appreciate that you've not ignored your obligations on
13 that in its entirety; you have produced some, and that's great.
14 The obligation applies to your own notes, and I'm asking you
15 not to needlessly cause us an adjournment.

16 MR. GELFAND: We will not, your Honor.

17 THE COURT: All right.

18 Anything further from the government?

19 MR. BHATIA: Your Honor, we also believe that emails
20 between Mr. Reinitz and counsel could also fall under that.

21 THE COURT: Sure. I mean, it is just typed versus
22 handwritten. Jencks doesn't differentiate. Just as you had
23 all of those scheduling emails and the like that you produced
24 for your witnesses, the logic is if Jencks applies in one
25 direction, it applies in the other. I'm sure defense counsel

Klndtem6

1 knows that.

2 Anything else from the government?

3 MR. BHATIA: Nothing else.

4 THE COURT: Anything else from the defense?

5 MR. GELFAND: No, your Honor.

6 THE COURT: I will see you all at 9 o'clock. Thank
7 you for a productive day. I will see you tomorrow.

8 (Adjourned to 9 a.m. January 24, 2020)

INDEX OF EXAMINATION

Examination of:	Page
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KAREN FINOCCHIARO

Cross By Mr. Gelfand	269
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Redirect By Mr. Bhatia	298
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Recross By Mr. Gelfand	303
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ELIE GABAY

Cross By Mr. Gelfand	370
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Redirect By Mr. Bhatia	412
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BONNIE SOON-OSBERGER

Direct By Mr. Bhatia	415
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Cross By Mr. DiRuzzo	441
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Redirect By Mr. Bhatia	465
----------------------------------	-----

Recross By Mr. DiRuzzo	467
----------------------------------	-----

GINA HOM

Direct By Mr. Bhatia	470
--------------------------------	-----

Cross By Mr. DiRuzzo	476
--------------------------------	-----

Redirect By Mr. Bhatia	481
----------------------------------	-----

Recross By Mr. DiRuzzo	482
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JOSEPH SOLEIMANI

Direct By Mr. Bhatia	485
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GOVERNMENT EXHIBITS

Exhibit No.	Received
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412 through 418	316
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141 through 146	325
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1	150	412
2	431, 441, 442, 443	423
3	401 through 409	494
4	409A and 409B	495
5	409C	505

DEFENDANT EXHIBITS

7	Exhibit No.	Received
8	16	283
9	52	287
10	36	392
11	29	400